

**PT 15-09**  
**Tax Type: Property Tax**  
**Tax Issue: Religious Ownership/Use**

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

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

v.

**CALVARY TEMPLE OF SPRINGFIELD, INC.**  
**Applicant**

**Docket No. 12-PT-0023**

**Tax Year 2012**

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**RECOMMENDATION FOR DISPOSITION**

Appearances: Robin Gill, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Gregory Scott of Scott & Scott Law for Calvary Temple of Springfield, Inc.

Synopsis:

Calvary Temple of Springfield, Inc. (“applicant” or “Calvary”) filed an application for a property tax exemption for the year 2012 for a parcel of property located in Sangamon County. The applicant alleges that the property qualifies for an exemption under section 15-40 of the Property Tax Code (35 ILCS 200/1-1 *et seq.*) on the basis that it is used exclusively for religious purposes and not used with a view to profit. In the alternative, the applicant contends that the property should be exempt under section 15-65 of the Property Tax Code on the basis that it is owned by a charitable organization, used exclusively for charitable purposes, and not used with a view to profit. The Sangamon County Board of Review (“County”) recommended that the property receive a full exemption, and the Department of Revenue (“Department”) disagreed with that decision, finding that only 50% of the property, the portion that is used as a thrift store,

should be exempt. The Department contends that the remaining 50% of the property is taxable because it is not used exclusively for religious or charitable purposes and it is used with a view to profit. The applicant timely protested the Department's decision, and an evidentiary hearing was held. After reviewing the record, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. The applicant was organized in November 1966 and was incorporated as an Illinois not-for-profit corporation in April 1967. (App. Ex. #6, p. 8)
2. The applicant provides a full worship schedule for its members, and it also operates a Christian school, daycare, thrift store, and a facility known as "The Hitting Center."<sup>1</sup> (App. Ex. #6, p. 8)
3. The Hitting Center is the only portion of the property that is at issue in this case. (Dept. Ex. #1, pp. 3-5)
4. The applicant's sanctuary, office, school and daycare buildings are located at 1730 West Jefferson in Springfield. (App. Ex. #6, p. 8)
5. The Hope Thrift Store and The Hitting Center are located at 1800 South Dirksen Parkway in Springfield. For the building on Dirksen, approximately 12,269 square feet is used for the thrift center, 15,091 is used for the Hitting Center, and 3,742 is used for storage for Calvary. (App. Ex. #1, p. 6, #6, p. 8)
6. The applicant acquired the property located at 1800 S. Dirksen on February 2, 2004 by entering into a Contract for Deed with Lincoln Land Development Company and LWS Enterprises, L.P. (Dept. Ex. #1, pp. 6-12)

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<sup>1</sup> The applicant also has a controlled subsidiary known as Capitol Retirement Village, which is a housing project located in Springfield. It is operated in accordance with Section 202 regulations prescribed by the U. S. Department of Housing and Urban Development. (App. Ex. #6, p. 8)

7. In May 2004, the applicant began operating The Hitting Center (“THC”), which is an instructional facility for people of all ages who want to improve their skills in baseball and softball. The facility is equipped with batting cages, baseball equipment, and plenty of indoor room to teach skills. (App. Ex. #1, p. 5)
8. THC is open to the general public, including people who have no church affiliation. Its hours of operation are 4:00 p.m. to 9:00 p.m. on weekdays, 10:00 a.m. to 3:00 p.m. on Saturdays, and on Sundays it opens around noon or 1:00 p.m.<sup>2</sup> (Tr. pp. 14-16, 43-44)
9. A membership fee of \$100 per month allows unlimited access to the facility. A “day pass” is available for \$15. In addition, a person can sign up for blocks of lessons or individual lessons. Individual lessons cost \$20. Most of the income from THC comes from the lessons. (Tr. pp. 44-48, 70-71)
10. The peak months are January through March when membership could be as high as 200 members. During the summer months membership may be as low as 30 members. (Tr. pp. 80-81)
11. THC provides a high quality service and is “the top training facility in the area.” (Tr. pp. 28-29, 70-71, 88-89)
12. The applicant allows people to volunteer at the facility in order to offset the fees that are charged. Others volunteer without receiving services because they just want to help the program. (Tr. pp. 31, 44, 49-50)
13. Bob Laurent and his wife Jackie are the onsite managers of THC. They volunteer their time and do not receive any wages from the applicant. They each have volunteered approximately 2,000 hours a year. (App. Ex. #1, p. 6; Tr. p. 27)

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<sup>2</sup> The closing time for Sundays was not provided.

14. The applicant conducts 2 or 3 Bible studies per week on the property. One of them is conducted on Tuesdays from 4:30 p.m. to 5:10 p.m. This meeting is only for “customers,” and the leader of the meeting is an employee of Calvary, Greg Brown. The average attendance is approximately 15 people. (App. Ex. #1, p. 6)
15. Another Bible study is on Thursdays from 9:00 a.m. to noon with an hour of prayer from noon until 1:00 p.m. This meeting is for customers, staff, and the general public. The average attendance is approximately 10 people. Mr. Brown is the leader of the meeting. (App. Ex. #1, p. 6)
16. These two meetings have been conducted on the property since September 2004. Sometimes an additional meeting that is similar to these two is conducted on the property. (App. Ex. #1, p. 6)
17. Calvary initially had 5 Bible studies on the property, but as THC “got bigger and bigger and bigger” the Bible studies were reduced to 3. (Tr. p. 66)
18. THC has an average of 6 or 7 instructors who are paid, and it has an average of 20 to 25 volunteers. (Tr. p. 70)
19. The staff at THC does not initiate discussions about religion with the customers. They wait for the customers to ask something like, “Why do you do what you do?” before they discuss religion. (Tr. pp. 57-58)
20. All of the income from THC goes to Calvary, and all of its expenses are paid through Calvary. Calvary’s business administrator pays the vendors. (Tr. pp. 83-84, 91)
21. The income statement prepared by Calvary for THC for the 12 months ending on June 30, 2011 shows the following income sources:

Sales <sup>3</sup>	\$140,180
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<sup>3</sup> Sales includes revenue from lessons and memberships. (Tr. p. 95)

Pepsi income	3,311
Dugout sales	1,570
Dugout other income	<u>906</u>

Total income	\$145,967
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(App. Ex. #2)

22. The expenses on the statement totaled \$148,590 for a net loss of \$2,623. (App. Ex. #2)

23. Children from Calvary’s baseball and softball teams are allowed to use THC for free.

Calvary also allows a few local non-profit organizations to use the facility for free. (Tr. pp. 74-75)

24. The facility is available for birthday parties and overnight groups for a fee that covers expenses. Sometimes the overnight groups are not charged if they volunteer to help at the facility. (Tr. pp. 58-60)

CONCLUSIONS OF LAW:

It is well-established under Illinois law that taxation is the rule, and tax exemption is the exception. Eden Retirement Center, Inc. v. Department of Revenue, 213 Ill. 2d 273, 285 (2004). “[A]ll property is subject to taxation, unless exempt by statute, in conformity with the constitutional provisions relating thereto.” *Id.* Statutes granting tax exemptions must be strictly construed in favor of taxation. *Id.* at 288; Chicago Patrolmen’s Association v. Department of Revenue, 171 Ill. 2d 263, 271 (1996); People ex rel. County Collector v. Hopedale Medical Foundation, 46 Ill. 2d 450, 462 (1970). All facts are to be construed and all debatable questions resolved in favor of taxation. Eden Retirement Center, Inc., at 289. Every presumption is against the intention of the State to exempt the property from taxation. Oasis, Midwest Center for Human Potential v. Rosewell, 55 Ill. App. 3d 851, 856 (1<sup>st</sup> Dist. 1977). Whenever doubt

arises, it must be resolved in favor of requiring the tax to be paid. Quad Cities Open, Inc. v. City of Silvis, 208 Ill. 2d 498, 508 (2004).

The burden of proof is on the party who seeks to qualify its property for an exemption. Eden Retirement Center, Inc., *supra*; Chicago Patrolmen’s Association, *supra*. “The burden is a very heavy one.” Provena Covenant Medical Center v. Department of Revenue, (“Provena I”) 236 Ill. 2d 368, 388 (2010); Oasis, Midwest Center for Human Potential, *supra*. The party claiming the exemption bears the burden of proving 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. Eden Retirement Center, Inc., *supra*; Board of Certified Safety Professionals of the Americas, Inc. v. Johnson, 112 Ill. 2d 542, 547 (1986) (citing Coyne Electrical School v. Paschen, 12 Ill. 2d 387, 390 (1957)).

### **Religious Exemption**

Authority to grant property tax exemptions emanates from article IX, section 6 of the Illinois Constitution of 1970. Section 6 authorizes the General Assembly to exempt certain property from taxes and provides, in part, 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. Ill. Const. 1970, art. IX, §6.

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

- (a) Property used exclusively for:
  - (1) religious purposes, or
  - (2) school and religious purposes, or
  - (3) orphanagesqualifies for exemption as long as it is not used with a view to profit.

35 ILCS 200/15-40(a).

The term “exclusively” refers to the primary purpose for which the property is used. McKenzie v. Johnson, 98 Ill. 2d 87, 98 (1983).

Calvary first argues that the property should be exempt because it is used exclusively for religious purposes and not used with a view to profit. According to Calvary, the Hitting Center is used solely for furthering Calvary’s ministry by ministering to youth through athletics. Calvary is using sporting activities to try to reach children to introduce them to a relationship with Christ. Calvary indicated that it would not operate THC except for ministry purposes. The current managers would not be volunteering their time, year after year, if there was no ministry outreach objective. Calvary furthers its outreach by conducting Bible studies on the premises.

Calvary states that the Hitting Center allows Calvary’s members to share the message of Christ in a subtle and non-direct manner. Calvary contends that the ministry at THC strengthens family units, strengthens bonds with children and parents, and teaches strong moral values to the children. All family assistance is without charge and an extension of Calvary’s ministry.

Calvary argues that the evidence shows that THC is not operated with a view to profit. According to Calvary, THC is operated with an effort to break even with the funds that it generates. THC is only able to operate because Calvary supplements the funds from THC and because of the numerous volunteers at the facility. The applicant allows the students at its school to use THC for free. When the applicant charges fees, it is an amount that allows THC to break even. THC relies upon donations of equipment and personnel to maintain its operation. THC usually does not have a surplus of income, and when it does, it is reinvested into the operations.

In response, the Department argues that the Hitting Center is a commercial enterprise rather than a religious one because the primary purpose of the facility is to provide hitting and baseball instruction for a fee. Nearly all of the income from the facility is derived from fee

paying customers. Other than a few hours per week that are dedicated to Bible studies and youth group meetings, the majority of the time the facility is dedicated to hitting and baseball instruction, and the facility is not used primarily for religious purposes.

The Department refers to two cases to support its contention. In Faith Builders Church, Inc. v. Department of Revenue, 378 Ill. App. 3d 1037 (4<sup>th</sup> Dist. 2008), the court found that a daycare and preschool that were operated by Faith Builders Church did not qualify for an exemption because the property was used primarily as a daycare and was not used primarily for religious purposes. In Fairview Haven v. Department of Revenue, 153 Ill. App. 3d 763, 773 (4<sup>th</sup> Dist. 1987) the court found that the operation of a retirement home allowed the church to engage in evangelization, but operating a retirement home is not primarily religious and does not qualify for the religious purposes exemption. The Department notes that even though these cases concern a daycare and a nursing home, the reasoning in these cases is applicable to the instant case.

Calvary argues that these cases are distinguishable because operating a daycare and a nursing home are substantially different than the purpose of the Hitting Center. The Hitting Center is operated with the intent of assisting the youth of the Springfield area to develop a strong moral code, strengthen their family unit, and spread the Gospel of Jesus Christ. The volunteers at THC do so as an outreach of their religious beliefs and not for the purpose of running a business. If Calvary operated THC for a profit, the fees would be higher.

Despite Calvary's contentions, the evidence presented in this case does not clearly and convincingly show that the operation of THC reaches the level of primarily religious use, and the cases cited by the Department are helpful in understanding this. In Fairview Haven, *supra*, the court provided the constitutional parameters for the religious-use inquiry, which are as follows:

first, the court must accept the organization's characterization of the purpose of its activities, and second, the court must determine whether the property is in fact exclusively used for the religious purposes. Fairview Haven at 773. The court in Fairview Haven found that the nursing home did not qualify for the religious purposes exemption and stated as follows:

Here it is not contested that the operation of Fairview provided an opportunity for members of the Apostolic Christian faith to carry out Christian service work, care for the elderly, and engage in evangelization. However, operation of the nursing home was not necessary for these religious purposes, which could also have been accomplished through other means. *Id.* at 774.

In Faith Builders Church, *supra*, the court denied the religious exemption for property that was used as a daycare and preschool and stated as follows:

In a sense, everything a deeply devout person does has a religious purpose. But if that formulation determined the exemption from property taxes, religious identity would effectively be the sole criterion. A church could open a restaurant, for instance, and because waiters attempted to evangelize customers while taking their orders, the restaurant would be exempt. But the operation of a restaurant is not necessary for evangelism and religious instruction, although, like any other social activity, it can provide the occasion for those religious purposes. The same could be said of a day-care facility. Day care is simply not a 'religious purpose' within the commonly accepted definition of that term. *Id.* at 1046.

The same reasoning supports denying the exemption in the present case. First, Calvary's characterization of the purpose of its activities is accepted; the purpose and objective of THC is an outreach ministry through athletics. The actual use of the property, however, is primarily for athletics, and the religious use is minimal. The use of the property is similar to the restaurant analogy that the court described in Faith Builders; the operation of a hitting center "is not necessary for evangelism and religious instruction, although, like any other social activity, it can provide the occasion for those religious purposes." The property in this case is primarily used as an instructional facility for baseball and softball, which is not a "religious purpose" within the commonly accepted meaning of that term.

The witnesses who testified in this case are clearly devout Christians who use the Hitting Center as an outreach for Calvary's ministry, but the evidence does not clearly indicate that religious use is the primary use. The witnesses agreed that the Hitting Center provides a high quality service and is "the top training facility in the area." (Tr. p. 29) The high quality service causes more people to want to be there. (Tr. p. 28) The amount of income that the Hitting Center receives is a clear indication that it serves many customers. In response to the popularity of the Hitting Center, Calvary reduced the number of Bible studies on the property from 5 to 3. In addition, the staff at the Hitting Center does not initiate discussions about religion with the customers. They wait for the customers to ask something like, "Why do you do what you do?" before they discuss religion. These facts raise doubt that the use of the property is primarily religious.

Calvary admits that there is no overt religious instruction (tr. p. 9), and Calvary's members try to share the message of Christ in a subtle and non-direct manner. (App. Brief, p. 3) Reverend Johnson testified that the Hitting Center allows children and their families to learn how to interact competitively, socially and "hopefully" spiritually. (Tr. p. 17) In Franciscan Communities, Inc. v. Hamer, 2012 IL App (2d) 110431, the court denied a property tax exemption for a retirement community and stated that "the issue is not the religious motivation behind the day-to-day use of the subject property, but the day-to-day use itself." *Id.* at ¶28 The court added that "For purposes of taxation, courts look at whether advancing religion is identified as the subject property's dominant purpose." *Id.* at ¶29, citing Provena I at 409. The property in the present case is being used with the *hope* of helping people spiritually, but it is not the dominant use of the property.

Mr. Laurent testified that athletics is the venue where families are at right now, and Calvary is simply ministering through athletics. He said the motto for the Hitting Center is “mentoring the champions of tomorrow,” and a champion includes being a good person. (Tr. p. 33) He believes that mentoring is a religious activity. (Tr. p. 56) “It’s one thing to come in and give them a lesson; it is another thing to become part of their lives.” (Tr. p. 51)

Mentoring children and families is certainly a noble pursuit, but it is not, *per se*, a religious activity. The activities on the property are laudable, but laudable acts do not necessarily warrant an exemption. See Coyne Electrical School, at 399; Rogers Park Post No. 108, American Legion v. Brenza, 8 Ill. 2d 286, 291 (1956); Turnverein Lincoln v. Board of Appeals of Cook County, 358 Ill. 135, 144-145 (1934). In Fairview Haven, *supra*, the court noted that religious organizations encourage the practice of *all* virtues including charity and kindness to others, especially to the aged, but these are not religious purposes within the commonly accepted definition of the words. Fairview Haven, at 774. Being mentors and role models for children and families promotes the well-being of our society, but it is an activity that does not constitute religious use under the commonly accepted definition of the words.

Finally, one of the witnesses testified that there is a designated “prayer room” that is located between the Hitting Center and the Hope Thrift Store, and it is solely used for prayer. (Tr. pp. 67-68) The square footage of the room was not provided, and it is not clear whether this room is included in the 50% of the property that the Department agrees is entitled to an exemption. It is also not clear whether the Bible studies take place in that room rather than in the wide open hitting areas. Calvary did not provide additional information regarding this room, although there is a photograph of a small room that looks like a conference room. (App. Ex. #3, p. 4) If the sole use of the room is for prayer, then it would be exempt as religious use.

Unfortunately, the evidence in this case is insufficient to determine whether the room is already included in the property that the Department agrees should be exempt.

### **Charitable Exemption**

Section 15-65 of the Property Tax Code allows exemptions for charitable purposes and provides, in relevant part, 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.... 35 ILCS 200/15-65(a).

Property may be exempt under this subsection 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. *Id.*; Chicago Patrolmen's Association, *supra*. Whether property is actually and exclusively used for charitable purposes depends on the primary use of the property. Methodist Old Peoples Home v. Korzen, 39 Ill. 2d 149, 156-57 (1968). 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).

The Illinois Supreme Court set forth the constitutional standards for a charitable purposes exemption in Methodist Old Peoples Home, *supra*, and reiterated them in Eden Retirement Center, Inc., *supra*, and Provena I, *supra*. The following guidelines are characteristics of a charitable institution: (1) the organization has no capital, capital stock or shareholders; (2) the organization earns no profits or dividends but rather derives its funds mainly from public and private charity and holds them in trust for the objects and purposes expressed in its charter; (3) the organization dispenses charity to all who need and apply for it; (4) the organization does not provide gain or profit in a private sense to any person connected with it; (5) the organization

does not appear to place any obstacles in the way of those who need and would avail themselves of the charitable benefits it dispenses; and (6) the primary purpose for which the property is used, and not any secondary or incidental purpose, must be charitable. Methodist Old Peoples Home, at 156-57. For purposes of applying these criteria, the court defined charity as “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.” *Id.*

Calvary argues that THC is used exclusively for the charitable purpose of furthering Calvary’s ministry and ministering to the youth through athletics. The entire purpose for its existence is to be an outreach ministry for the community through an athletic venue. Calvary claims that there is no evidence indicating that a person was turned away or not offered services due to the lack of ability to pay. Anyone who wishes to use the facility but is unable to pay for it is still allowed to use it. Calvary believes that the fact that a person who is offered free services is asked to assist in the maintenance of the ministry and outreach does not make it a commercial venture.

Calvary reiterates its claim that it does not operate THC with a view to profit; THC does not generate sufficient funds to operate without financial aid from Calvary. Although fees are charged, the fees are set to only break even on expenses and not make a profit. The fact that the record does not have the actual number of people who use the facility for free or reduced fees does not support the denial of the exemption.

In response, the Department argues that the Hitting Center is a commercial enterprise rather than a charitable one because the primary purpose of the facility is to provide hitting and baseball instruction for a fee. The Department contends that the applicant’s facility does not

provide charity; rather, it offers services for payment. Other than a few hours per week that are dedicated to Bible studies, the majority of the time the facility is dedicated to hitting and baseball instruction.

With respect to the six characteristics of a charitable institution, the Department argues that the second factor is not met because virtually all of the applicant's income at the Hitting Center is generated from fees charged to the patrons. The income statement shows that most of the income received is from customers who pay for the services and not from public or private donations.

The Department also argues that the third and fifth factors are not met because the record is not clear about the actual number of individuals who are receiving free or reduced fees for the services at the facility. The testimony at the hearing indicated that some of the patrons were asked to perform work at the facility in exchange for either free or reduced fees for the services. The Department states that the record does not quantify the amounts or give specific information regarding the fee waivers or reduced fees. The Department contends that the sixth factor is not met because the facts are clear that the Hitting Center almost exclusively serves customers who pay a fee, and the primary use of the property is not charitable.

As the Department has indicated, the evidence does not clearly and convincingly show that THC property is used primarily for charitable purposes. The second guideline from Methodist Old Peoples Home, *supra*, is not met because the majority of the income from the Hitting Center is from lessons and memberships, not public or private charity. Nevertheless, neither this factor nor how the revenue is used is determinative of an organization's entitlement to a charitable tax exemption. The fact that the primary funding source is not public or private charity is not, by itself, dispositive. See Provena Covenant Medical Center v. Department of

Revenue, (“Provena II”) 384 Ill. App. 3d 734, 746 (4<sup>th</sup> Dist. 2008), *aff’d*, 236 Ill. 2d 368 (2010) (citing American College of Surgeons v. Korzen, 36 Ill. 2d 340, 348 (1967)). The fact that the applicant uses its income to further its charitable purposes also does not determine whether there should be an exemption. See Three Angels Broadcasting Network, Inc. v. Department of Revenue, 381 Ill. App. 3d 679, 697 (5<sup>th</sup> Dist. 2008); Cook Communications Ministries v. Department of Revenue, 345 Ill. App. 3d 753, 763 (2<sup>nd</sup> Dist. 2004); Salvation Army v. Department of Revenue, 170 Ill. App. 3d 336, 344 (2<sup>nd</sup> Dist. 1988). The actual activities on the property must be considered. *Id.*

In Provena II, the court stated that the factors of dispensing charity to all who need and apply for it and placing no obstacles in their way “are essential criteria; they go to the heart of what it means to be a charitable institution.” *Id.* at 750. Furthermore, the factor that the property is used exclusively for charitable purposes is the *sine qua non* of the exemption. *Id.* at 743. In the present case, the facts do not clearly and convincingly show that the applicant meets these guidelines.

Charity is not merely helpfulness, but generosity; “[t]o be charitable, an institution must give liberally.” Provena II, at 750. It is not clear from the record how often charity was provided and whether it was given liberally. Reverend Johnson testified that he has taken “many” children to the facility to use it without charge (tr. p. 14), but it is not clear how often this happened during the year in question. Mr. Brown testified that approximately 10 to 12 percent of individuals are receiving free services (tr. p. 74), but documentation to support this was not provided. Mr. Brown also testified that Calvary’s baseball and softball teams use the facility for free, and other local non-profit organizations use the facility for free. (Tr. pp. 74-75) Again, how often this happened during the year in question was not given.

In addition, it is not clear whether the children who received the “charity” were expected to “volunteer” at the facility in return. The testimony indicated that people are allowed to “volunteer” at the facility to offset the fees. (Tr. pp. 31, 44) “The children may be required to perform some small tasks around the facility in exchange for receiving the Hitting Center’s services.” (App. Brief, p. 4) In Provena II, the court reaffirmed that charity is a “gift.” *Id.* at 750. “‘Charity’ is an act of kindness or benevolence.” *Id.* Expecting people to work at the facility in exchange for “free” services is not charity because a gift is, by definition, free goods or services. *Id.* at 751; see also In re Estate of Berbecker, 277 Ill. App. 201 (1<sup>st</sup> Dist. 1934) (a gift is “a voluntary transfer of property by one to another without any consideration or compensation therefor”). Requiring a person to work at the facility in return for lessons or membership is contrary to the definition of a gift and, therefore, not charity. The evidence in this case does not indicate how many of the children who received fee waivers worked at the facility in lieu of paying the fees.

Mr. Brown testified that when a local coach was diagnosed with a terminal illness, his daughter was devastated with the news, and the staff at THC “took her in.” (Tr. p. 69) She is at the facility “as often as she wants to be, and she’s not paying anything.” *Id.* The staff, however, “put her to work. So she has self-respect for what she’s doing. She doesn’t feel like this is just charity.” *Id.* Instilling self-respect is important, but having the children work there in lieu of paying fees is not charity.

Furthermore, even if Calvary does have a true fee waiver policy that allows people to use the facility without working there in return, there is no indication that Calvary advertises this policy in any way. Failing to adequately notify the public of a fee waiver policy or free services is considered to be an obstacle in the way of those seeking charity. See Riverside Medical

Center v. Department of Revenue, 342 Ill. App. 3d 603, 608-609 (3<sup>rd</sup> Dist. 2003); Alivio Medical Center v. Department of Revenue, 299 Ill. App. 3d 647, 652 (1<sup>st</sup> Dist. 1998). This does not, however, automatically warrant denying the exemption. Randolph Street Gallery v. Zehnder, 315 Ill. App. 3d 1060, 1068-1069 (1<sup>st</sup> Dist. 2000). In Randolph Street Gallery, the court found that during the years in question, the applicant actually used its fee waiver policy. In the present case, it is unclear how often it was used and how often children were expected to work there in order for the fees to be waived.

Finally, the evidence does not support a finding that the actual use of the property is primarily charitable. The amount of true charity that Calvary gives at the Hitting Center is not clear. The evidence presented indicates that the property is primarily used as an instructional facility for which people pay or provide work for the services.

In summary, the evidence in this case raises doubt that the Hitting Center is primarily used for either religious or charitable purposes. As previously mentioned, exemption provisions are strictly construed, and all doubts must be resolved in favor of taxation. Eden Retirement Center, Inc., *supra*. Because the evidence presented in this case falls short of showing clearly and convincingly that the property in question is used primarily for either religious or charitable purposes, the exemption must be denied.

Recommendation:

For the foregoing reasons, I recommend that the Department's decision to allow an exemption for 50% of the property be upheld.

Linda Olivero  
Administrative Law Judge

Enter: September 29, 2015