IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
CHAMPAIGN COUNTY, ILLINOIS

THE CARLE FOUNDATION, an Illinois not-for-profit corporation,	)	
Plaintiff,	)	
v.	)	Case No. 08 L 0202
ILLINOIS DEPARTMENT OF REVENUE; *et al.*	)	Hon. Randall B. Rosenbaum
Defendants,	)	

STATE DEFENDANTS' POST-TRIAL BRIEF

I. INTRODUCTION

In *Midwest Palliative Hospice and Care Center v. Beard,* 2019 IL App (1st) 181321, ¶ 31, the First District Appellate Court recently opined that, "(j)ust because an institution offering medical services is *willing* to provide charitable care, it does not mean that the institution's exclusive purpose was, *in fact*, to provide charity in a given year." (Emphases added) Testimony by certain witnesses offered by the Plaintiff attempted to suggest an often grudging *willingness* to provide charitable care during the years 2004 - 2011. The financial records of the Plaintiff admitted into evidence demonstrate that Plaintiff's exclusive purpose was, *in fact*, anything but the provision of charity during those years.

Plaintiff asks the Court to grant property tax exemptions for the four parcels identified in the original and each subsequent complaint for the years 2004 through 2011. The bases for the requested charitable exemptions can best be understood by employing the classic metaphor of a "three legged stool": if any one of the legs fails the entire stool collapses. The three legs upon which Plaintiff's claims sit can be summarized as the venue provisions of Section 23-25(e) of the Property Tax Code, 35 ILCS 200/23-25(e); the statutory requirements for charitable ownership

under Section 15-86 of the Property Tax Code, 35 ILCS 200/15-86; and the constitutional requirements of Article IX, section 6 of the Illinois Constitution of 1970. While failure of any single basis would doom Plaintiff's exemption claims, all three bases asserted by Plaintiff are wholly inadequate under Illinois law. No leg supports the weight intended by Plaintiff.

In addition to the points, arguments and authorities set out below, the State Defendants hereby adopt the points, arguments and authorities set out by the County Defendants in their Post-Trial Brief.

II. FUNDAMENTAL PRINCIPLES CONCERNING PROPERTY TAXATION

Each of the bases for charitable exemption asserted by Plaintiff at trial must be evaluated against the long established legal principles governing property taxation in Illinois. Application of these principles to Plaintiff's claims makes clear these claims are untenable. Plaintiff in fact has devised unprecedented theories precisely to undermine longstanding law concerning property taxation.

A. Constitutional requirements for property tax exemption

Article IX, section 6, of the Illinois Constitution provides that "[t]he General Assembly by law *may exempt* from taxation *only* . . . property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes . . . ." 1970 Ill. Const., art IX, § 6 (emphasis added). Consequently, section 6 operates as both an authorization and limitation on the power of the General Assembly to exempt Illinois property from taxation, see *Eden Retirement Ctr., Inc. v. Dep't of Revenue*, 213 Ill. 2d 273, 290 (2004). The Supreme Court has made clear that "[t]he legislature cannot add to or broaden the exemptions specified in section 6." *Provena Covenant Med. Ctr. v. Dep't of Revenue*, 236 Ill. 2d 368, 389 (2010) (citing

Chi. Bar Ass'n v. Dep't of Revenue, 163 Ill. 2d 290, 297 (1994)). Although the General Assembly cannot grant exemptions beyond those authorized by section 6, it may, however, "place restrictions, limitations, and conditions on [property tax] exemptions as may be proper by general law." *N. Shore Post No. 21 of the Am. Legion v. Korzen*, 38 Ill. 2d 231, 233 (1967).

In *Oswald v. Hamer*, 2018 IL 122203 (2018), the Supreme Court reaffirmed the longstanding interpretation of what is required for a property tax exemption under Article IX, section 6 of the Illinois Constitution of 1970. "Charitable use is a constitutional requirement. An applicant for a charitable-use property tax exemption must 'comply unequivocally with the constitutional requirement of exclusive charitable use,'" *Oswald* at ¶ 15, (emphasis in the original) citing *Eden Retirement Ctr., Inc.*, 213 Ill. 2d at 287.

B. <u>Presumption in favor of taxation</u>

Oswald also clearly reiterated that, "Article IX of the 1970 Illinois Constitution (Ill. Const. 1970, art. IX) generally subjects all real property to taxation," *Oswald* at ¶ 10, (citing *Eden Retirement Ctr., Inc. v. Dep't of Revenue*, 213 Ill. 2d 273, 285 and cases cited therein). "Under Illinois law, taxation is the rule. Tax exemption is the exception," *Oswald* at ¶ 12, citing *Provena* 236 Ill.2d at 388. Further, "[w]here the legislature does choose to provide for an exemption, it must remain within constitutional limitations. 'No other subjects of property tax exemption are permitted. The legislature cannot add to or broaden the exemptions specified in section 6.'" *Oswald* at ¶ 14, (quoting *Provena*, 236 Ill. 2d at 389), citing *Eden*, 213 Ill. 2d at 286; *Chicago Bar Ass'n v. Department of Revenue*, 163 Ill. 2d 290, 297. Any statute granting tax exemptions must be strictly construed in favor of taxation. *Board of Certified Safety Professionals of the Americas, Inc. v. Johnson*, 112 Ill.2d 542, 547 (1986). Courts have no power to create exemption from taxation by judicial construction (*City of Chicago v. Illinois Department of Revenue*, 147 Ill.2d

484, 491 (1992).

C. Burden of proof for property tax exemption

The burden of establishing entitlement to a tax exemption rests upon the person seeking it. *City of Chicago v. Illinois Department of Revenue*, 147 Ill.2d at 491(1992). Taxpayers may be required to demonstrate entitlement to exemption each and every year, even if there has been no change in circumstances. *Jackson Park Yacht Club v. Illinois Dept. of Local Affairs*, 93 Ill. App.3d 542, 546 (1981); *Application of DuPage County Collector*, 157 Ill. App.3d 355, 359 (1987). In *Brown's Furniture, Inc. v. Wagner*, 171 Ill. 2d 410, 432 (1996) the Supreme Court indicated it had refused to estop the State from "reexamining a taxpayer's liability even when returns for the relevant tax period have been filed and approved."; See *Austin Liquor Mart, Inc. v. Department of Revenue,* 51 Ill.2d 1, 4 (1972) ("It is firmly established that where the public revenues are involved, public policy ordinarily forbids the application of estoppel to the State.").

Oswald explicitly stated that "[t]he party claiming an exemption carries the burden of proving clearly that the use of the subject property is within both the constitutional authorization and the terms of the statute under which the claim of exemption is made." *Oswald* at ¶ 18 (citing *Eden*, 213 Ill. 2d at 288-89 (and cases cited therein); *Rogers Park Post No. 108 v. Brenza*, 8 Ill. 2d 286, 290 (1956)).

III. PLAINTIFF WHOLLY FAILED TO ESTABLISH ENTITLEMENT TO PROPERTY TAX EXEMPTIONS FOR THE FOUR PARCELS FOR TAX YEARS 2004-2011

A. Section 23-25(e) merely provides Plaintiff an opportunity to attempt to establish entitlement to exemptions in the Circuit Court.

Plaintiff incorrectly asserts that Section 23-25(e) allows the Court to somehow use the

exemptions issued by the Department of Revenue in 2012 as a "predicate" for the exemptions sought by Plaintiff for 2004 – 2011. After recognizing that *Carle Foundation v. Illinois Dep't of Revenue*, 396 Ill.App.3d 329 (4th Dist. 2009) ("*Carle I*") allowed Plaintiff to bypass the statutory administrative exemption process and seek a judicial determination of a property's exempt status, Plaintiff suggested that *Carle I* did not define "the precise contours of a Section 23-25(e) claim" and erroneously turned for direction to *Carle Foundation v. Cunningham Township*,

2016 IL App (4th) 140795 ("*Carle II*") for contours suited to its purpose.

However, *Carle I* quite specifically held that Section 23-25 (e) statutorily overruled *Illinois Bell Telephone Co. v. Allphin*, 60 Ill.2d 350, 359, 326 N.E.2d 737, 742 (1975), which held that taxpayer could contest the denial of an exemption only by litigating under the Administrative Review Law rather than petitioning the circuit court in equity for an injunction. The Fourth District Appellate Court in *Carle I* cited M. Davis & E. Gracie, *Taxable & Exempt Property*, in Real Estate Taxation § 1.108, at 1–112 (Ill. Inst. for Cont. Legal Educ.2008) for the proposition:

> Effectively, [subsection (e), added to section 23–25 by section 5 of Public Act 90–679 (Pub. Act 90–679, § 5, eff. July 31, 1998),] revives the *traditional suit in equity for injunction* as one of the primary means of establishing a claim for exemption, provided that the Department * * * (or a court on review) has acted favorably on a comparable claim for any other year.

917 N.E.2d at 1145 (emphasis added)

While acknowledging that *Carle II* is not binding precedent as the Appellate Court's judgment was vacated and remanded by the Supreme Court in *Carle Foundation v. Cunningham Township*, 2017 IL 120427, Plaintiff urges that *Carle II's* interpretation of Section 23-25(e) effectively predicts what the Fourth District Appellate Court will rule in the event this court's ruling is appealed. In discussing two competing views of Section 23-25(e), the court in *Carle II* recognizes that Plaintiff initially supported the first view:

> Plaintiff seems to take the view that the favorable decision serves merely as an admission ticket into the circuit court and that once the taxpayer is admitted, the ticket is forgotten and the court applies section 15–86 in a de novo determination of whether the parcel deserves an exemption for the assessment year in question. In this view, the circuit court would function as a super agency. Cf. 35 ILCS 200/16–70 (West 2014) ("The Department shall determine whether the property is legally liable to taxation.").

Carle II, ¶ 91

Such continues to be the view of the State Defendants as it comports best with *Carle I's* holding above that Section 23-25(e) is a revival of the traditional suit in equity for and injunction, 917 N.E.2d at 1145, but also the plain language of Section 23-25(e) as quoted in *Carle I*:

> The limitation in this Section shall not apply to court proceedings to establish an exemption for any specific assessment year, provided that the plaintiff or its predecessor in interest in the property has established an exemption for any subsequent or prior assessment year on grounds comparable to those alleged in the court proceedings. For purposes of this subsection, the exemption for a subsequent or prior year must have been determined under Section 8–35 [(35 ILCS 200/8–35 (West 2014))] or a prior similar law by the Department or a predecessor agency, or under Section 8–40 [(35 ILCS 200/8–40 (West 2014))]. Court proceedings permitted by this subsection may be initiated while proceedings for the subsequent or prior year under Section 16–70 [(35 ILCS 200/16–70 (West 2014))], 16–130 [(35 ILCS 200/16–130 (West 2014))], 8–35, or 8–40 are still pending, but judgment shall not be entered until the proceedings under Section 8–35 or 8–40 have terminated.

Carle II, ¶ 87

The alternative view of section 23-25(e) advocated by the court in *Carle II* and now by Plaintiff was perceived as "the advantage of not transforming the circuit court into a clone of the Department," *Carle II*, ¶ 92,:

> The legislature could have intended the favorable decision to serve not merely as an admission ticket into the circuit court, but as an object of comparison in the trial. The trial would compare two sets of facts: the facts existing during the assessment year in question and the facts on which the Department or the circuit court relied

> when finding the parcel to be exempt for a subsequent or prior year. That would not be the same thing as taking over the Department's job.

Carle II, ¶ 92

In fact, that interpretation completely contradicts those longstanding precedents holding that a taxpayer may be required each and every year to demonstrate entitlement to exemption, *even if there has been no change in circumstances*. *Jackson Park Yacht Club* 93 Ill. App.3d at 546; *Application of DuPage County Collector*, 157 Ill. App.3d at 359. Rather than having the court under Section 23-25(e) "be on the lookout for arbitrariness in the form of an inconsistent treatment of substantially the same facts," *Carle II*, ¶ 92, the interpretation urged here by Plaintiff would permit the use of a decision of the Department of Revenue in the recent past to resolve the question of exemption in a relatively distant past.

The assertion by Plaintiff that none of the Defendants have argued that there is a material difference between Plaintiff's entitlement to exemptions in 2012 and its claimed entitlement to exemptions for the years 2004 through 2011 is *procedurally* incorrect – as the close of trial allows Defendants to "argue" material difference for the first time after Plaintiff presents its argument at the close of trial; *legally* incorrect – as the term "materially different" occurs not in Section 23-25(e) but only in the vacated opinion in *Carle II*; and *factually* incorrect- as the material differences between 2012 and the years between 2004 through 2012 discussed below are numerous and weighty.

While "material difference" does not appear in Section 23-25(e), "grounds comparable" does, providing only that once the "comparable year" requirement is met "the limitation in this Section [the requirement of exhaustion of administrative remedies] shall not apply". See 35 ILCS 200/23-25(e). Consequently, the comparable year is merely a condition on the exception to the requirement of exhaustion of administrative remedies with nothing in the section suggesting the

comparable year serves any ongoing function in deciding the claim. Any suggestion that the grounds for the charitable exemptions it now seeks are "comparable" to those it had been previously granted would be a profound departure from the settled law that tax exemptions are sui generis, meaning that exemptions granted in one year never control, as a matter of law, determinations for subsequent or prior years. *Coyne Electrical School v. Paschen*, 12 Ill. 2d 387, 393 (1957); *Jackson Park Yacht Club*, 93 Ill. App. 3d at 546; *People ex rel. Tomlin*, 89 Ill. App. 3d at 1011-12.

B. Section 15-86 merely provides hospitals an opportunity to take advantage of a new category of ownership, but is not applicable to Plaintiff in this case

1. Section 15-86 of the Property Tax Code provided a new category of ownership.

In enacting section 15-86, the General Assembly sought to accomplish two things. First, the amendment modifies, for non-profit hospitals and their affiliates, the ownership requirements the General Assembly imposed in section 15-65 on "institutions of public charities." 35 ILCS 200/15-65(a) (2016). The justices in *Provena* all agreed that the property owner in that case could not satisfy the exemption regardless of its affiliate's exclusive use because it was the subsidiary that operated the hospital. *See* 236 Ill. 2d at 412 (Burke, J. and Freeman, J., concurring); *see Provena Covenant Med. Ctr. v. Dep't of Revenue*, 384 Ill. App. 3d 734, 741-42 (4th Dist. 2008) (discussing statutory requirement of "owned by an institution of public charity"). Section 15-86 changed that. Under new section 15-86(c), 35 ILCS 200/15-86(c) (2016), a charitable property tax exemption can be granted not only to property owners that operate hospitals, but to their "affiliates" that own hospital property as well. *See* 35 ILCS 200/15-86(b) (2016).

Second, the General Assembly sought to "establish a new category of *ownership* for charitable property tax exemption to be applied to not-for-profit hospitals and hospital affiliates in lieu of the existing ownership category of 'institutions of public charity'." 35 ILCS 200/15-86(a)

(5) (2014) (emphasis added). This new ownership category includes "quantifiable standards for the issuance of charitable exemptions for such property." *Id.* In this provision the General Assembly was careful to make clear that it was not creating a blanket exception for such institutions simply because an applicant could meet a quantitative threshold: "It is *not* the intent of the General Assembly to declare any property exempt ipso facto, but rather to establish criteria to be applied to the facts on a case-by-case basis." *Id.* (emphasis added). Accordingly, the new exemption sought to modify the statutory ownership standards, *not* the constitution's exclusive charitable use requirements or the *Korzen* "frame of reference" criteria.

In addition to quoting section 15-86(a) (5) at ¶ 25, the *Oswald* court explained the crucial connection between "the new category of ownership" established through that provision and the constitutional requirement of exclusive charitable use:

> …the legislature stated in section 15-86(a) (5): "It is the intent of the General Assembly to establish a new category of ownership for charitable property tax exemption to be applied to not-for-profit hospitals and hospital affiliates in lieu of the existing ownership category of 'institutions of public charity'." 35 ILCS 200/15-86(a) (5) (West 2012). This is an explicit reference to section 15-65, which in turn contains the explicit reference to the constitutional limitation of exclusive charitable use. Id. § 15-65. Construing these provisions together as a whole (*Murphy-Hylton*, 2016 IL 120394, ¶ 25), we conclude that the legislature intended to comply with this constitutional limitation.

Oswald at ¶ 34. *Korzen* and *Provena* therefore continue to be the benchmark cases against which a hospital applicant's "exclusive" charitable use of property is judged.

2. Section 15-86 does not supplant the *Korzen* criteria to a hospital's exemption request.

Statutes are construed as constitutional whenever it is reasonable to do so. *Eden*, 213 Ill. 2d at 291-92. Accordingly, a private party seeking a property tax exemption must prove, as part of its *prima facie* case, that the property in question falls within the terms of *both* the exempting statute and the constitutional authorization, as many cases have now explicitly held. *Provena*, 236

Ill. 2d at 388 (party claiming exemption must prove by clear and convincing evidence that property in question falls within both constitutional authorization and terms of statute under which exemption is claimed); *People ex rel. Nordlund v. Ass'n of Winnebago Home for Aged*, 40 Ill. 2d 91, 100 (1968) (taxpayer must "also comply unequivocally with the constitutional requirement of exclusively charitable use"); *Korzen*, 39 Ill. 2d at 155 ("Plaintiffs must show that its organization and the use of its property came within the provisions of the statute and the constitution"); *Meridian Vill. Ass'n v. Hamer*, 2014 IL App (5th) 130078, ¶ 6 ("Even if an 'old people's home' meets the statutory requirements for exemption, it must also meet the constitutional requirements for charitable use").

In articulating this rule, the Illinois Supreme Court has also repeatedly stated that the legislature cannot, by statute, declare property or uses "ipso facto" exempt — in opinions using that phrase specifically. *Eden*, 213 Ill. 2d at 290; 290; *Korzen*, 39 Ill. 2d at 155; *MacMurray Coll. v. Wright*, 38 Ill. 2d 272, 276 (1967). Thus, Illinois statutory provisions simply do not operate to eliminate the constitutional requirement of exclusive charitable use. Instead, the rule in Illinois is that it is "for the courts, and not for the legislature, to determine whether property in a particular case is used for a constitutionally specified purpose." *Eden*, 213 Ill. 2d at 290. Accordingly, nothing in section 15-86 undermines the constitutionality of the statute *because* the existence of the statutory exemption is not the ultimate test for deciding exemption. Instead, as has long been the case, statutory exemptions purporting to designate property or uses *per se* exempt based on some enumerated test are deemed "descriptive" and "illustrative," and their requirements are applied *in addition to*, rather than instead of, the constitutional standard. *McKenzie v. Johnson*, 98 Ill. 2d 87, 97-101; *see Korzen*, 39 Ill. 2d at 156 (amendatory language "did nothing more than add language which was descriptive and illustrative" of retirement homes").

The long history of how Illinois courts read tax exemption statutes presents the backdrop against which the General Assembly passed section 15-86, and it is with that understanding that the section must be read. *See Burrell v. S. Truss*, 176 Ill. 2d 171, 176 (1997) (statutes enacted after judicial opinions are published create presumption that legislature acted with knowledge of prevailing case law); *People v. Hickman*, 163 Ill. 2d 250, 262 (1994) (same). Here, though the legislature provided that its intent was to create a new class of charitable "ownership" of entities entitled to receive a tax exemption, it never indicated that it was eliminating the constitutional limitation of charitable use or the tests that the Supreme Court has articulated to measure an applicant's entitlement to exemption. This accounts for why the legislature stated that it intended section 15-86 be "applied to the facts on a case-by-case basis," consistent with the cases. 35 ILCS 200/15-86(a) (5) (2014). The exemption cases described above surely do not require case-by-case decision-making for its own sake, but rather, a case-by-case application of the constitutional *Korzen* criteria as part of the taxpayer's prima facie case. Since both the statutory *and* constitutional tests must still be met, the *Oswald* court did not declare section 15-86 facially unconstitutional. *Oswald* at ¶ 43.

The General Assembly, in enacting section 15-86, did not do so in a vacuum. Obviously, language should not be ripped from its context to make a rule broader than the factual circumstances that called forth the language. *Rosewood Care Ctr., Inc. v. Caterpillar, Inc.*, 226 Ill. 2d 559, 572 (2007). More than 100 years of judicial interpretation concern the constitution's "used exclusively" language, going all the way back to *Sisters of the Third Order of St. Francis v. Board of Review*, 231 Ill. 317 (1907). And this body of law establishes that the statutory exemption of property in nearly all cases "depends upon its actual use, which is primarily a factual

determination. . . ." Braden and Cohn, *The Illinois Constitution: An Annotated and Comparative Analysis* (1969), at 438-39.

The *Oswald* court read section 15-86 consistently with both its preamble and the applicable precedent and consequently determined that a hospital applicant invoking the new section must continue to meet *both* the statutory tests established by section 15-86 for charitable ownership *and* the constitutional criteria enumerated in *Korzen* for exclusive charitable use. It follows that this court must review the Plaintiff's "application" for exemption using these same criteria.

The heart of Section 15-86's statutory standard is the offset of statutory services against the estimated property tax bill. If a "hospital applicant" satisfies the conditions for an exemption with respect to "subject property", it is to be issued a charitable exemption "for that property". See 35 ILCS 200/15-86(c). Even if Plaintiff could bring this cause of action in the circuit court, Plaintiff has failed to demonstrate the services it claims fall within the statutory criteria; and it has failed to adequately demonstrate the amount of these services.

3. Plaintiff's failure to consistently allocate costs of charity care to any given year defeats its Section 15-86 claim.

Plaintiff's statutory claim for exemption is premised on value ascribed to services provided under its financial assistance policy. See 35 ILCS 200/15-86(e) (1). Plaintiff's demonstrative exhibits failed to establish it met the statutory exemption threshold if such services are not included. (TR-446.1, TR-447, TR-448.1, TR-449, TR-450, TR-451, TR-452, TR-453). For tax years 2006 through 2011, this credit is the sole statutory basis for exemption claimed. (TR-448.1, TR-449, TR-450, TR-451, TR-452, TR-453).

Plaintiff's engaged in a practice of reviewing debt that had already been deemed an accrued expense, for accounting purposes, and later determining whether it should retroactively be deemed charitable under its financial assistance policy. Rob Tonkinson testified that if a patient qualified

for Medicaid and had prior balances "we could then go back and wipe out those balances because we knew that they qualified for charity care". Tonkinson (1/8/19) 21:1-4. Further, if one member of a family qualified for charity care, that person's entire household would also qualify. Tonkinson (1/9/19) 147:14-16. Plaintiff would then search the accrued debts of family members of the patient and recharacterize them as charity care. Tonkinson (1/9/19) 148:3-15. Margaret Everette recalled that someone could have an account four or five years old at a collection agency before applying for charity care for the account. Everette (1/29/19) 49:7-11.

Plaintiff repeatedly admitted it could not determine how much of the medical debt it claimed as charity in any given year had previously been characterized as an accrued expense for accounting purposes. Such retroactive recharacterization of debt occurred sometimes years after the fact, thereby undermining Plaintiff's statutory claim to exemption.

Such recharacterized debt is not "free or discounted services provided pursuant to the relevant hospital entity's financial assistance policy", as required by Section 15-86. See 35 ILCS 200/15-86(e)(1). Rather, it is forgiveness of accrued medical debt, which is not a service listed in Section 15-86. According to Rob Tonkinson, Plaintiff did not expect to collect this debt. Tonkinson (1/1/19) 13:4-12.

In not offsetting the current "estimated tax liability" against either the value of current services it provided, or the average value of charitable services it provided in the last three years, Plaintiff is instead offsetting the current tax liability against the value of services it decided was charitable in the current year. By claiming "free or discounted services provided pursuant to [its] financial assistance policy" at different and uncertain dates, Plaintiff is unable to satisfy its statutory obligations for exemption..

4. Retroactivity provisions of Section 15-86 of the Property Tax Code precludes its use by Plaintiff

The issue of retroactive application of Section 15-86 of the Property Tax Code simultaneously resolves whether "plaintiff even qualifies for a section 15–86 exemption in the first place," and whether this court can "avoid reaching constitutional issues when a case can be decided on other, nonconstitutional grounds." In *Carle Foundation v. Cunningham Township,* 2017 IL 120427, the Supreme Court explained the reasons the Court declined the request of the parties to address certain merits of this case on appeal. The second reason offered by the Court was based upon the

> …court's long-standing rule is that "cases should be decided on nonconstitutional grounds whenever possible, reaching constitutional issues only as a last resort." *In re E.H.*, 224 Ill.2d 172, 178, 309 Ill.Dec. 1, 863 N.E.2d 231 (2006). Consequently, "courts * * * must avoid reaching constitutional issues when a case can be decided on other, nonconstitutional grounds," and such issues "should be addressed only if necessary to decide a case." *People v. Hampton*, 225 Ill.2d 238, 244, 310 Ill.Dec. 906, 867 N.E.2d 957 (2007).

Carle Foundation, 2017 IL 120427, ¶ 34

The Court further recognized that "…there has yet to be any determination in this case that plaintiff even qualifies for a section 15–86 exemption in the first place. If it turns out that plaintiff does not, then that too would constitute 'other, nonconstitutional grounds' for disposing of plaintiff's exemption claims." *Carle Foundation*, 2017 IL 120427, ¶ 34.

In determining whether a statute may be applied retroactively, the Supreme Court has adopted the approach set forth by the United States Supreme Court in *Landgraf v. USI Film Products*, 511 U.S. 244, 114 S.Ct. 1483, 128 L.Ed.2d 229 (1994). *Commonwealth Edison Co. v. Will County Collector*, 196 Ill.2d 27, 37–39, 749 N.E.2d 964 (2001); *Allegis v. Realty Investors v. Novak,* 223 Ill.2d 318, 330, 860 N.E.2d 246, 252-53 (2006). The analysis involves two steps:

> First, if the legislature has expressly prescribed the statute's temporal reach, the expression of legislative intent must be given effect absent a constitutional prohibition. Second, if the statute contains no express provision regarding its temporal reach, the court must determine whether the new statute would have

> retroactive effect, keeping in mind the general principle that prospectivity is the appropriate default rule.

Allegis, 223 Ill. 2d at 330-331.

Pursuant to the provisions of Public Act 97-688, effective June 14, 2012, Section 90 of the Cigarette Machine Operators' Occupation Tax Act ("Cigarette Tax Act") defines the retroactivity of Section 15-86 of the Property Tax Code, and provides in pertinent part:

> "The changes made by this amendatory Act of the 97th General Assembly to the Property Tax Code *** shall apply to: (1) all decisions by the Department on or after the effective date of this amendatory Act of the 97th General Assembly regarding entitlement or continued entitlement by hospitals, hospital owners, hospital affiliates, or hospital systems to charitable property tax exemptions; (2) all applications for property tax exemption filed by hospitals, hospital owners, hospital affiliates, or hospital systems on or after the effective date of this amendatory Act of the 97th General Assembly; (3) all applications for property tax exemption filed by hospitals, hospital owners, hospital affiliates, or hospital systems that have either not been decided by the Department before the effective date of this amendatory Act of the 97th General Assembly, or for which any such Department decisions are not final and non-appealable as of that date. ***"

35 ILCS 128/90

Indeed, the issue of retroactivity in large part depends on the term “application” in clause (3). The Plaintiff has claimed – but not pled - since the enactment of Section 15-86 that clause (3) of Section 90 applies to the present case because (1) the present lawsuit contains the Plaintiff’s “challenge to the DOR’s denial of the Foundation’s property tax exemption applications” and (2) that DOR’s denial of the Plaintiff’s exemption applications “was not final and non-appealable on the effective date” of Section 15-86. Further, the Plaintiff has also previously suggested that a “court proceeding” is actually an “application” under Section 15-5 and could therefore constitute an “application” under Section 15-86. The tortured reasoning offered by the Plaintiff for each theory of retroactivity does not survive scrutiny of the statutory provisions involved, and in turn ignores the meaning of the term “application.”

Plaintiff has consistently ignored the actual meaning of "application" in sections of the Property Tax Code where the term is used, such as Section 15-5, which concerns the creation of exemptions:

> Any person wishing to claim an exemption for the first time, other than a homestead exemption under Sections 15-165 through 15-180, shall file an application with the county board of review or board of appeals, following the procedures of Section 16-70 or 16-130. In addition, in counties with a population of 3,000,000 or more, the board of review shall transmit to the county assessor's office, within 14 days of receipt, a copy of any application that requests exempt status under Section 15-40.

35 ILCS 200/15-5

Similarly, Section 16-70 of the Property Tax Code, 35 ILCS 200/16-70, which concerns Boards of Review in counties, such as Champaign County, with less than three million inhabitants, provides guidance regarding the processing of applications for property tax exemption has also been ignored by the Plaintiff.

However, the meaning of "applications for property tax exemption" for purposes of P.A. 97-688 is perhaps best illustrated by the plain language of Section 15-86 of the Property Tax Code, which was enacted as part of P.A. 97-688. 35 ILCS 200/15-86. Section 15-86(b)(6) defines "hospital applicant" as "a hospital owner or hospital affiliate that files an application for a property tax exemption pursuant to Section 15-5 and this Section." . 35 ILCS 200/15-86(b) (6). Section 15-86(h) is entitled "Application" and provides in pertinent part:

> Each hospital applicant applying for a property tax exemption pursuant to Section 15-5 and this Section shall use an application form provided by the Department. The application form shall specify the records required in support of the application and those records shall be submitted to the Department with the application form. Each application or affidavit shall contain a verification by the Chief Executive Officer of the hospital applicant under oath or affirmation stating that each statement in the application or affidavit and each document submitted with the application or affidavit are true and correct.

35 ILCS 200/15-86(h)

5. The Plaintiff is wholly unable to show that it has satisfied or could satisfy the plain meaning of the terms "hospital applicant" or "application" under Section 15-86(h).

"Applications for property tax exemption" under the Property Tax Code are the province of county Boards of Review and the Illinois Department of Revenue. The Fourth District Appellate Court in *Carle Foundation v. Illinois Department of Revenue*, 396 Ill.App.3d 329, 917 N.E.2d 1136 (4th Dist., 2009) recognized the difference between applications under multiple provisions of the Property Tax Code and "court proceedings to establish an exemption" under Section 213-25(e). The Court held that "court proceedings to establish an exemption" are an action to establish an exemption which is "not otherwise specifically provided by the Code."396 Ill.App.3d at 339, 917 N.E.2d at 1144.

As noted above, court proceedings to establish an exemption" under Section 23-25(e) are clearly intended to be equitable suits for injunction rather than "applications for property tax exemption." Consequently, Plaintiff's assertion that bringing this action pursuant to Section 23-25(e) of the Property Tax Code can constitute an "application" under Section 15-86 also must fail.

The applicability of Section 90 and the retroactive application of Section 15-86 therefore necessarily turn on the meaning of the term "application." However, Plaintiff fails to specifically allege anywhere in its Fourth Amended Complaint (1) that it ever filed applications for property tax exemption for the Four Parcels pursuant to Section 15-5 of the Property Tax Code for 2004 and 2005; (2) that any such applications for property tax exemption were denied by the Department of Revenue; or (3) that Plaintiff ever sought to overturn any decisions by the Department of Revenue denying such applications. Nowhere in the Fourth Amended Complaint does Plaintiff allege that the present lawsuit is intended to challenge or to overturn DOR decisions or to constitute "applications" for purposes of Section 15-86.

Consequently, there is no basis for allowing the Plaintiff to include Section 15-86 as a basis for its claims under Section 23-25(e). Retroactive application of Section 15-86 in that fashion would violate the provisions of Section 90 of the Cigarette Tax Act.

C. Plaintiff cannot satisfy the constitutional requirements for charitable exemption

1. Exclusive charitable use

The test for "exclusive" use is applied in a practicable way. It is well established, for example, that the exclusive use requirement does not prevent an exemption as long as the exempted use is the property's "primary" use, even if there are also incidental or secondary uses of the property that fall outside the exemption. *Ill. Inst. of Tech. v. Skinner*, 49 Ill. 2d 59, 66 (1971); *Girl Scouts of Du Page Cty. Council, Inc. v. Dep't of Revenue*, 189 Ill. App. 3d 858, 862 (2d Dist. 1989); *Highland Park Hosp. v. Dep't of Revenue*, 155 Ill. App. 3d 272, 278 (2d Dist. 1987). Nor does the Constitution operate to prevent a taxing district from allowing a proportional exemption for property shown to be physically separated into exempt and nonexempt uses. See, e.g., *People ex rel. Kelly v. Avery Coonley Sch*., 12 Ill. 2d 113, 117 (1957); *City of Mattoon v. Graham*, 386 Ill. 180, 186 (1944).

Nonetheless, exempted property must actually be used for charitable purposes in the relevant tax year, and mere ownership by a charitable institution is not enough. In 1968, *Korzen* addressed how the "used exclusively" test in the constitution is applied in the context of an applicant seeking a charitable tax exemption when a statute purported to exempt from property tax nearly all not-for-profit retirement homes. At issue was a statutory amendment to the Property Tax Code that defined exempt retirement homes as those operated by a not for profit corporation and state-licensed, even when "financed wholly or in part by charges made to [their] residents. . ." 39 Ill. 2d at 154. The amendment appeared to exempt not-for-profit retirement homes whether

operated as charity or not, but the court held that the statute had to be construed in light of the broader constitutional limitations placed on granting tax exemptions. *Id*. at 155-56.

Within this context, the Court concluded that the change made by the General Assembly to the definition of exempted retirement homes could be construed as applying only to those institutions that could show operation consistent with the constitutional provision allowing exemptions for property used exclusively for charitable purposes. *Id*. at 156. Thus, so long as there was an individual factual determination for each claimant that the property at issue had actually been used in the constitutional sense "exclusively" for charitable purposes in the relevant tax year, the statutory change made by the General Assembly was facially constitutional. *Id*.

The Court then went on to identify what it means for property to be used exclusively for "charitable" purposes within the Constitution's intent. The passage from *Korzen*, setting out this relevant test, states the following:

> It has been stated that a charity is a gift to be applied, consistently with existing laws, 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; that the distinctive characteristics of a charitable institution are that it has no capital, capital stock or shareholders, earns no profits or dividends, but rather derives its funds mainly from public and private charity and [h]olds them in trust for the objects and purposes expressed in its charter; that a charitable and beneficent institution is one which dispenses charity to all who need and apply for it, does not provide gain or profit in a private sense to any person connected with it, and 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; that the statements of the agents of an institution and the wording of its governing legal documents evidencing an intention to use its property exclusively for charitable purposes do not relieve such institution of the burden of proving that its property actually and factually is so used; and that the term 'exclusively used' means the primary purpose for which property is used and not any secondary or incidental purpose.

Id. at 156-57 (citations omitted).

Korzen emphasized that these principles are not formulaic, but constitute merely "the frame of reference" from which the court "must apply plaintiff's use of its property to arrive at a determination of whether or not such use is in fact exclusively for charitable purposes." Id. at 157. In applying this frame of reference to the case before it, the court in *Korzen* determined that the applicant was not entitled to the exemption, consistent with the factual findings of the lower court's special master. *Id.* at 159-60. Soon after *Korzen*, in *People ex rel. Nordlund v. Ass'n of Winnebago Home for the Aged*, 40 Ill. 2d 91, 100 (1968), the court acknowledged that it was difficult to articulate a universally applicable definition of "an exclusively charitable use." But the court said that *Korzen* had established "general guidelines and standards" for that purpose. Id.

The ultimate purpose of the Korzen factors is to ascertain whether the institution has used the property in the relevant tax year primarily as an instrument of gift-giving. For both a "charity" and an act of "charity" are characterized by kindness or benevolence. *Provena Covenant Med. Ctr. v. Dep't of Revenue of State,* 384 Ill. App. 3d 734, 750 (4th Dist. 2008), aff'd sub nom. *Provena Covenant Med. Ctr. v. Dep't of Revenue,* 236 Ill. 2d 368(2010). And as the appellate court has observed, "There is nothing particularly kind or benevolent about selling somebody something." Id. "To be charitable, an institution must give liberally," and any effort to remove the primacy of this gift-giving quality from the analysis debases the meaning of charity. Id.

Following *Korzen* and *Nordlund,* Illinois appellate courts consistently applied the same standards when evaluating whether a particular institution was entitled to a charitable property tax exemption, even though the *Korzen* considerations, such as the characteristic of not having shareholders or paying dividends, do not always relate directly to the "use" of the property at issue. E.g., *Decatur Sports Found. v. Dep't of Revenue*, 177 Ill. App. 3d 696, 708 (4th Dist. 1988); *Highland Park,* 155 Ill. App. 3d at 279; *Plymouth Place, Inc. v. Tully*, 54 Ill. App. 3d 657, 660 (1st

Dist. 1977). Instead, the *Korzen* factors were seen as informing an overall analysis, and so courts continued to recognize that *Korzen* either set the "criteria" for judging the charitable use of property, *Alivio Med. Ctr. v. Dep't of Revenue*, 299 Ill. App. 3d 647, 650 (1st Dist. 1998), or, provides the "fundamental guidelines for determining if property is in fact being used for charitable purposes," *Fairview Haven v. Dep't of Revenue*, 153 Ill. App. 3d 763, 770 (4th Dist. 1987).

Korzen remained the clear benchmark for determining exclusive charitable use in Illinois even after the 1970 constitution slightly rephrased the applicable exclusive use requirement for charitable exemptions. Eden, 213 Ill. 2d at 286. Subsequently, the Supreme Court continued to acknowledge *Korzen* as establishing the relevant "guidelines or criteria" for resolving the constitutional question of whether property is put to exclusive charitable use. 213 Ill. 2d at 287. For example, in *Provena*, 236 Ill. 2d at 391, the court referred to Korzen as presenting the "distinctive characteristics" of an institution entitled to receive a charitable property tax exemption. Most recently, *Korzen* was cited by the Supreme Court as setting out the "constitutional test of exclusive charitable use." Oswald, 2018 IL 122203, ¶ 39.

Korzen is, therefore, the essential benchmark on which the "exclusive charitable use" of property is judged for purposes of the constitutional requirements of Article IX, section 6. This is so even in the face of statutory provisions that modify the legislative standards for receiving an exemption. For, as the court has stated, it is the province of the courts, not the legislature, to determine whether property in a particular case is used for a constitutionally specified purpose. *Eden*, 213 Ill. 2d at 290; *Korzen*, 39 Ill. 2d at 155-56; *MacMurray Coll. v. Wright*, 38 Ill. 2d 272, 276 (1967).

2. Plaintiff's claims must be denied because it cannot establish that it satisfied the *Korzen* factors of exclusive charitable use.

As explained above, Korzen cannot be dismissed as irrelevant simply because an owner is a charitable entity. Such an approach runs contrary to the Supreme Court's express holdings in *Korzen, Nordlund, Eden,* and *Oswald,* and many appellate decisions that have applied the *Korzen* factors specifically in resolving the exclusive constitutional use issue, e.g., *Provena,* 384 Ill. App. 3d at 742, aff'd on other grounds, 236 Ill. 2d 368; *Alivio,* 299 Ill. App. 3d at 650; *Decatur Sports Found.,* 177 Ill. App. 3d at 708; *Highland Park,* 155 Ill. App. 3d at 279; *Fairview Haven,* 153 Ill. App. 3d at 770; *Plymouth Place, Inc.*, 54 Ill. App. 3d at 660.

This part of the test asks whether the "primary purpose for which property is used" is charitable, "and not any secondary or incidental purpose," 39 Ill. 2d at 157. See *Provena,* 236 Ill. 2d at 403. And though "charity" does not necessarily require almsgiving per se, the benefits must accrue to people tangibly. "It is not enough that incidental benefits may come to the public as a result of the property's use." *Coyne Elec. Sch. v. Paschen*, 12 Ill. 2d at 398 (1957).

As the Supreme Court stated, the "critical issue is the use to which the property itself is devoted, not the use to which income derived from the property is employed." *Provena,* 236 Ill. 2d at 403; see also *City of Lawrenceville v. Maxwell,* 6 Ill. 2d 42, 49 (1955) ("property which is used to produce income to be used exclusively for charitable purposes may not be exempted from taxation"); *People ex rel. Goodman v. University of Illinois Foundation,* 388 Ill. 363, 374 (1944) ("the test [is] the present use of the property rather than the ultimate use of the proceeds derived from the property sought to be exempted"). This is also because writing off uncollectible debt is analogous to aspects of any healthcare business, even for profit businesses. *Riverside Med. Ctr. v. Dep't of Revenue,* 342 Ill. App. 3d 603, 608 (3d Dist. 2003); *Highland Park,* 155 Ill. App. 3d at 280-81; Alivio, 299 Ill. App. 3d at 652.

As the Supreme Court has held, "services extended. . . for value received . . . do not relieve the [s]tate of its burden." Willows v. Munson, 43 Ill. 2d 203, 208 (1969); see also People ex rel. Nordlund, 40 Ill. 2d at 101-02 (noting that "in the case of the hospitals many impoverished persons were readily admitted and cared for without charge."). An equally reasonable inference is that charging Medicaid and Medicare the maximum amounts permitted by law does not lessen the burden of government.

D. Plaintiff's actions from 2004 through 2012 defeat claims of both exclusive charitable use and "no material difference."

Each category set out below related to provision of charity care by Plaintiff – eligibility policies, cost-to charge ratios, patients served and charity compared to other financial metrics – illustrate Plaintiff's consistently *de minimis* approach to the provision of financial assistance to low income and needy persons. The data shown at trial in these and other categories show conduct inconsistent with the long established requirement of exclusive charitable use of property for tax exemption as well as the wholly unconventional approach under the vacated *Carle II* of comparing prior years to 2012. Neither analysis will sustain Plaintiff's campaign for property tax exemption.

1. Community Care discount guidelines

Subsection 15-86(e) of the Property Tax Code addresses "(s)ervices that address the health care needs of low-income or underserved individuals or relieve the burden of government with regard to health care services," which "shall be considered for purposes of making the calculations required by subsection (c)." Subsection 15-86(e)(1) defines "(c)harity care" as "(f)ree or discounted services provided pursuant to the *relevant hospital entity's financial assistance policy*, *measured at cost*, including discounts provided under the Hospital Uninsured Patient Discount

Act." (Emphasis added) The Plaintiff's "financial assistance policy" which determined which persons would be eligible for charity care – whether designated as "Community Care" or the "Community Care Discount" changed repeatedly over time.

The earliest "financial assistance policy" of Plaintiff admitted into evidence appears to be from 1998 – Policy #200 "Community Care." (TR0016) There is no statement in this policy of the parameters for either eligibility for "uncompensated medical care" or the "uncompensated care discount" or for the amount of possible discounts. Similarly, the Policy #200 revised as of July 12, 2003, also referred to the discount available to applicants was designated "uncompensated care discount." (TR0040) Although the 2003 policy admitted into evidence was not signed, the signature line was for Patricia Owens as "Director – Patient Accounting." Again, there is no specific information provided regarding either eligibility requirements or the amount of available discounts.

On October 30, 2003, the *Wall Street Journal* published an article entitled "Hospitals Try Extreme Measures to Collect Their Overdue Debts," which focused in part on the debt collection practices of the Plaintiff, including the use of body attachment writs. (TR1156) At trial, the Plaintiff's CEO, Dr. James Leonard, testified that Plaintiff "…at some point in time stop using body attachment writs in the collections process." Leonard, (01/04/19), 104:14-16.

In February, 2004, the Plaintiff issued a press release announcing an expansion of aid to the uninsured. (TR0051) The announcement explained new eligibility requirements for Community Care – 100% discount for persons at or below 150% of the Federal poverty level and a "sliding scale discount" up to 250% of the Federal poverty level. Prior to the expansion, the range was from 100% of the Federal poverty level, with a sliding scale down to a 25% discount for persons up to 200% of the Federal poverty level. (TR0051, p.2)

Plaintiff's "Situation summary and key messages" document included for "internal" use an explanation of the "Body Attachment Policy Change" which explained the change was not prompted by Plaintiff's fear of losing its non-profit status, but rather to "redirect public debate to the issue of health care funding for those most in need." (TR0052, p.3)

Plaintiff's Policy #200 was reviewed and revised in February, 2005. (TR0093) While not signed, Patricia Owens is again the person identified as signing the revised policy. The "Community Care Program Discount Table Effective 2/18/05" (TR0094) set out the sliding scale for Community Care – up to 150% of the Federal Poverty Level (FPL) can receive a 100% discount; between 100% and 180% of FPL receives a 75%discount; between 180% and 210% of FPL can receive a 50% discount; while between 210% and 250% of FPL is eligible for a 25% discount.

Only four months later, on June 14, 2005, Plaintiff's Policy #200 was again revised. (TR0106) The sliding scale benchmarks identified in the Discount Table (TR0094) are set out for what appears to be the first time in Policy #200 is explained in paragraph 4 on page 2. Previous iterations of Policy #200 admitted into evidence provided that assets will be taken into consideration during the Community Care application process. (TR0016, TR0049 and TR0093), the June, 2005 revision provided that "liquid" assets exceeding $2000.00 would be added to an "applicant's income total for the past 12 months," while "IRAs,401ks and 403b would not be considered liquid assets. (TR0106, p.2)

In October, 2005, Plaintiff's Policy #200 was yet again revised. (TR0117) The sliding scale for the Community Care sliding scale discount was amended so that up to 200% of the Federal Poverty Level (FPL) can receive a 100% discount; between 150% and 230% of FPL receives a 75% discount (*sic*); greater than 230% but less than or equal to 270% of FPL can receive

a 50% discount; while between 270% and 300% of FPL is eligible for a 25% discount. (TR0117. P.2)

In the Policy #200 revision dated June 10, 2008 (TR0165), the sliding scale appears to have been corrected so that so that up to 200% of the Federal Poverty Level (FPL) can receive a 100% discount; between 200% and 230% of FPL receives a 75% discount; greater than 230% but less than or equal to 270% of FPL can receive a 50% discount; while between 270% and 300% of FPL is eligible for a 25% discount.

As Plaintiff expanded the reach of its Community Care Discount program in connection with its acquisition of Carle Clinic Association in April, 2010, specific geographic boundaries on the residence of non-emergency patients were instituted. (TR-216, p. 2 ¶A, Attachment 1); Jackson (1/16/19) 67:22-68:2, 123:6-24; 124:20-125:6. Robert Tonkinson testified during trial that:

> Sure. So -- so we're going into this -- this merger and we're now extending our charity care program to cover all physician's services. And so the concern was that we might get patients from Chicago, from St. Louis, from other parts of the country coming to take advantage of what would be essentially totally free care for them. And -- and, you know, we didn't feel that that was part of our -- our mission. Our mission was to care for the patients in East Central Illinois, and for tertiary care services, anybody else. So if -- if a hospital from -- from outside our primary and secondary service area sent somebody, life-flighted somebody to us maybe in a trauma situation or something, so they -- they could have lived in, you know, anywhere, really. But if they were -- were brought to us, then they'd certainly qualify. But this was to try and -- there was a concern among the leadership that it was possible that people would inundate us because of the generous nature of the policy, and it applying to both the physician side and the hospital side.

Tonkinson (1/7/19) 112:10-13. Renita Jackson confirmed that only emergency services would be provided to patients seeking access outside of their contracted network area. Jackson (1/16/19) 133:10-17.

The changes in Plaintiff's charity care policy during the years in dispute undermines any claim by Plaintiff that it dispenses charity to all who need and apply for it. By defining "need," Plaintiff clearly controls who can successfully apply for charity care.

2. Cost to Charge Ratios

To calculate "charity care at cost" for purposes of Section 15-86 of the Property Tax Code, Plaintiff utilized a cost to charge ratio in accordance with Section 20(a)(3) of the Illinois Community Benefits Act, 210 ILCS 76/20(a)(3), whereby "(c)harity care must be reported separate from other community benefits. In reporting charity care, the hospital must report the actual cost of services provided, based on the total cost to charge ratio derived from the hospital's Medicare cost report (CMS 2552-96 Worksheet C, Part 1, PPS Inpatient Ratios), not the charges for the services." Section 15-86(e)(6) mentions the use of a cost to charge ratio utilizing Worksheet C, Part I from a hospital's annual Medicare cost report.

Plaintiff's Medicare cost reports for the years 2004 through 2012 were admitted into evidence as exhibits TR0410 through TR0418. The cost to charge ratios for each year appear below:

Exhibit	Year	Cost to Charge Ratio
TR0410	2004	.3571
TR0411	2005	.3331

TR0412	2006	.3364
TR0413	2007	.3282
TR0414	2008	.3149
TR0415	2009	.2905
TR0416	2010	.2519
TR0417	2011	.2565
TR0418	2012	.2850

Exhibit TR1068 is a collection of financial data prepared by Plaintiff over time covering the years FY 2002 through CY 2012. Included among the data presented estimated charity costs and charity care charges. As noted in Table 10 below (TR1099), the same estimated charity costs and charity charges can be used to calculate cost to charge ratios and charge to cost ratios. The estimates are also shown for total and for "hospital corporation":

Table 10: CFCH75891 - Data

FY / CY	($) Est. Charity Costs	($) Est. Charity Charges	($) Est. Charity Costs (Hospital Corp.)	($) Est. Charity Charges (Hospital Corp.)	Ratio Charity Cost to Charity Charges	Ratio Charity Cost to Charity Charges (Hospital Corp.)	Ratio Charity Charges to Charity Costs	Ratio Charity Charges to Charity Costs (Hospital Corp.)
FY 2004	1,984,228	4,800,711	1,972,040	4,782,633	0.41	0.41	2.42	2.42
FY 2005	2,529,358	6,380,586	2,501,317	6,336,217	0.40	0.39	2.52	2.53
FY 2006	4,904,086	12,226,598	4,790,874	12,009,431	0.40	0.40	2.49	2.51
FY 2007	7,626,841	18,465,809	6,874,446	17,194,827	0.41	0.40	2.42	2.50
FY 2008	9,900,887	25,805,742	8,659,332	23,688,653	0.38	0.37	2.61	2.74
FY 2009	9,043,695	25,562,743	7,831,344	23,466,404	0.35	0.33	2.83	2.99
FY 2010	11,522,312	36,885,155	9,025,099	31,622,591	0.31	0.29	3.2	3.50
CY 2010	10,003,370	32,366,022	6,159,812	23,826,803	0.31	0.26	3.24	3.87
CY 2011	25,244,659	96,486,633	15,753,168	71,130,127	0.26	0.22	3.82	4.51
CY 2012	35,183,681	135,199,952	19,336,085	90,399,666	0.26	0.21	3.84	4.67

Data from CFCH75891

The change in cost to charge ratios and charge to cost ratios year to year demonstrate that the growing imbalance between revenue and charity care provided.

3. Charity patients served

Two sources of information regarding the number of patients receiving charity care from Plaintiff. First, Plaintiff distributed each year a Community Benefit Report providing various types of information concerning the prior year. Estimates regarding persons receiving Community Care Discounts each year are among the items in the Community Benefit Reports for the years 2003 through 2012:

Exhibit	Year	Number of Estimated Community Care Recipients
TR2027A	2003	1,793
TR2027B	2004	>1,800
TR2027C	2005	3,400
TR2027D	2006	>4,000
TR2027E	2007	>4,500
TR2027F	2008	5,033
TR2027G	2009	4,463
TR2027H	2010	>4,000
TR2027I	FY 2011*	2,303
TR2027J	2011	6,295**
TR2027K	2012	25,593**

* Designation for six month period after merger

** Include numbers for physician groups.

Another source of information regarding the number of Plaintiff's estimated number charity patients for the years 2002 through 2013 are the Illinois Department of Public Health (IDPH) Hospital Profiles for Carle Foundation Hospital (TR1015 through TR1026). IDPH began tracking charity numbers for Illinois hospitals in 2007. Exhibit TR1097.1 (Table 9-A) below summarizes the data for the years 2007 through 2013 provided by Plaintiff to IDPH:

Table 9-A: IDPH Data – Numbers of Patients (FY 2007 – CY 2013)

FY / CY	Total Patients Reported: Inpatients	Charity Care Patients Reported: Inpatients	(%) Percent Charity Care Patients - Inpatients	Total Patients Reported: Outpatients	Charity Care Patients Reported: Outpatients	(%) Percent Charity Care Patients - Outpatients	Total Patients	Total Charity Patients	(%) Percent Charity Patients
FY 2007	17,593	1,971	11.20%	90,015	9,230	10.30%	107,608	11,201	10.41%
FY 2008	18,246	2,225	12.20%	91,581	10,615	11.60%	109,827	12,840	11.69%
FY 2009	18,736	1,842	9.80%	99,250	10,043	10.01%	117,986	11,885	10.07%
FY 2010	18,686	1,947	10.04%	95,579	11,485	12.00%	114,265	13,432	11.75%
CY 2011	18,518	1,545	8.30%	375,617	16,082	4.30%	394,135	17,627	4.47%
CY 2012	20,439	1,756	8.60%	387,024	21,729	5.60%	407,463	23,485	5.76%
CY 2013	20,978	3,220	15.30%	764,713	60,338	7.90%	785,691	63,558	8.09%

Data from IDPH Hospital Profiles, 2007 - 2013

For purposes of comparison, Exhibit TR1098.1 (Table 9-B) summarizes financial information related to the provision of charity care for the years 2007 through 2013 provided by Plaintiff to IDPH:

Table 9-B: IDPH Data – Revenue and Expenses (FY 2007 – CY 2013)

FY / CY	($) Total Inpatient Revenue	($) Total Outpatient Revenue	($) Total Revenue	($) Charity Care Expenses: Inpatient	($) Charity Care Expenses: Outpatient	($) Total Charity Care Expenses	(%) Percent Charity Care of Net Revenue	($) Expense Per Charity Care Patient
FY 2007	212,510,766	90,731,234	303,242,000	4,834,624	2,039,822	6,874,446	2.30%	613.74
FY 2008	222,305,743	113,347,257	335,653,000	5,946,848	2,712,484	8,659,332	2.60%	674.40
FY 2009	235,222,480	94,765,520	329,988,000	4,931,157	2,869,650	7,800,807	2.40%	656.35
FY 2010	260,980,000	110,449,000	371,429,000	5,787,667	3,149,402	8,937,069	2.40%	665.36
CY 2011	259,663,000	135,804,000	395,467,000	9,844,226	5,388,600	15,232,826	3.90%	864.18
CY 2012	271,679,000	147,971,000	419,650,000	10,681,168	8,063,826	18,744,995	4.50%	798.00
CY 2013	304,922,000	276,902,000	581,824,000	12,084,283	12,702,816	24,787,099	4.30%	390.00

Data from IDPH Hospital Profiles, 2007 - 2013

The discrepancies and uncertainties about the number of charity patients served by Plaintiff underscores the minimal nature of those numbers

4. Comparison of Charity Care to Hospital Financial Metrics

In voicing its objections to the comparison of its charity care data from 2004 through 2011 to standard hospital financial metrics appearing each year in its financial statements, Plaintiff turns first to *Sisters of Third Order of St. Francis v. Bd. of Review of Peoria Cty*., 231 Ill. 317, 319 (1907), a case where hospital managers received "no pay or remuneration whatever, except board, clothing, and a room or other space in which to live in the hospital building." Plaintiff also suggests there is no *Korzen* factor addressing the relationship between the "quantity of charity dispensed" by a party seeking exemption and other of financial performance.

Midwest Palliative Hospice and Care Center v. Beard, 2019 IL App (1st) 181321, ¶ ¶ 23-32 for sound guidance regarding the role of financial data in determining whether property is exclusively used for charitable purposes. The case concerns the property tax status of an inpatient hospice care center which sought a charitable property tax exemption. Similar to Plaintiff in the present case, the plaintiff in *Midwest Palliative Hospice* at ¶ 22 argued that five *Korzen* factors concern only charitable ownership rather exclusive charitable use.

For the year in question, the plaintiff in *Midwest Palliative Hospice* at ¶ 24, "the overwhelming majority of its operating revenue came from 'net patient services' of which 88% of the revenue came from Medicare or Medicaid reimbursement…94% of the revenue Midwest generated was from billing patients: exchanging medical services for payment, as a business." Charitable contributions composed only .4% of *Midwest Palliative Hospice* operating revenue. Charitable expenditures represented "less than 1% of the net services revenue of $30 million it generated that year." *Midwest Palliative Hospice* at ¶ 27

The court agreed with the Department's Administrative Law Judge that, because "the disparity between the dollar amount of Midwest's charity care and its 'net patient service revenue' is so extreme [it]

would not be reasonable to conclude that the primary use of this property is to provide charity." *Midwest Palliative Hospice* at ¶ 27 Less than 1% expenditure for charitable care on the property in question "represents an incidental act of beneficence that is legally insufficient to establish that Midwest 'exclusively' uses the Marshak Pavilion for charitable purposes." *Midwest Palliative Hospice* at ¶ 27

The court in *Midwest Palliative Hospice* at ¶ 30 also stated that while "the use of revenue should not be the sole focus, 'the critical issue is *the use to which the property itself is devoted,*'" (emphasis added) citing *Provena*, 236 Ill. 2d at 403. The way the revenue is used, however, was significant in informing about the way the property itself is being used. The evidence ultimately showed that *Midwest Palliative Hospice* ¶ 32 almost exclusively served people that did not need charitable care.

Regarding Plaintiff Carle Foundation, Table 8-A (TR1093.1) compares for the years 2004 – 2011 charity care at cost, net patient service revenue, total expenses, income from operations and excess revenue over expenses. Here CY 2010 corresponds to the six month period after merger.

Table 8-A: Carle Foundation – Charity Care at Cost, Net Patient Service Revenue, Total Revenue, Income from Operations, and Excess of Revenue over Expenses (FY2004 – CY2011)

FY/CY	($) Charity Care at Cost	($) Net Patient Service Revenue	($) Total Revenue	($) Total Expenses	($) Income From Operations	($) Excess of Revenue Over Expenses
FY 2004	2,042,186	294,448,390	342,901,565	325,921,659	16,979,906	32,929,023
FY 2005	2,529,000	327,171,629	376,974,350	368,071,002	8,903,348	14,209,172
FY 2006	4,904,000	355,287,135	409,072,567	379,264,346	29,808,221	112,033,875
FY 2007	7,628,000	423,288,000	487,314,000	453,565,000	33,749,000	111,299,000
FY 2008	9,901,000	431,717,000	494,959,000	458,827,000	36,132,000	34,934,000
FY 2009	9,043,000	455,964,000	515,433,000	461,129,000	54,304,000	(96,697,000)
FY 2010	11,522,000	513,532,000	830,145,000	767,545,000	62,600,000	128,961,000
CY 2010	9,884,000	295,166,000	840,161,000	806,664,000	33,497,000	56,117,000
CY 2011	25,244,000	497,347,000	1,608,886,000	1,571,538,000	41,298,000	92,138,000

Data from Carle Foundation Consolidated Financial Statements and Community Benefit Reports, 2004 – 2011
TR68, TR1001 – TR1008, TR2210, TR2027B – TR2027J

From the numbers in Table 8-A, charity care at cost is divided by each of the other categories in Table 8-B.

Table 8-B: Carle Foundation - Comparing Charity Care at Cost as Percentage of Net Patient Service Revenue, Total Revenue, Income from Operations, and Excess of Revenue over Expenses (FY2004 – CY2013)

FY/CY	($) Charity Care at Cost Carle Foundation	(%) Charity Care at Cost / Net Patient Service Revenue	(%) Charity Care at Cost / Total Revenue	(%) Charity Care at Cost / Total Expenses	(%) Charity Care at Cost / Income from Operations	(%) Charity Care at Cost / Excess of Revenue over Expenses
FY 2004	2,042,186	0.69%	0.59%	0.63%	12.03%	6.20%
FY 2005	2,529,000	0.77%	0.67%	0.69%	14.89%	17.80%
FY 2006	4,904,000	1.38%	1.20%	1.29%	16.45%	4.35%
FY 2007	7,628,000	1.80%	1.56%	1.68%	22.60%	6.85%
FY 2008	9,901,000	2.29%	2.00%	2.16%	27.40%	28.34%
FY 2009	9,043,000	1.98%	1.75%	1.96%	16.65%	Negative
FY 2010	11,522,000	2.24%	1.38%	1.50%	18.37%	8.93%
CY 2010	9,884,000	3.35%	1.18%	1.22%	29.50%	17.61%
CY 2011	25,244,000	5.07%	1.56%	1.61%	61.13%	27.90%

From data from Carle Foundation Consolidated Financial Statements and Community Benefit Reports, 2004 – 2011 TR68, TR1001 – TR1008, TR2210, TR2027B – TR2027J

The miniscule percentages set forth above should lead only to the conclusion that a very apt comparison would be Carle Foundations record for 2004 through 2011 to the plaintiff in *Midwest Palliative Hospice.* Carle almost exclusively serves people that did not need charitable care. Carle's disparity between the dollar amount of charity care and its 'net patient service revenue' (or any other financial metric) "is so extreme [it] would not be reasonable to conclude that the primary use of this property is to provide charity."

CONCLUSION

WHEREFORE, for all the reasons stated above and those stated in the County Defendants post-trial brief, the State Defendants pray the Court to enter judgment in favor of the Defendants and against the Plaintiff and deny Plaintiff all of the relief it now seeks.

May 13, 2019

Respectfully Submitted,

- \s\David F.Buysse
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Office of the Attorney General

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IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
CHAMPAIGN COUNTY, ILLINOIS

THE CARLE FOUNDATION, an Illinois not-for-profit corporation, Plaintiff, v. ILLINOIS DEPARTMENT OF REVENUE; *et al.* Defendants,	))))))))))	 Case No. 08 L 0202 Hon. Randall B. Rosenbaum

[Proposed] ORDER

This matter coming before the Court before the Court following a trial on the merits, post-trial briefing, and argument, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. Summary judgment was previously entered against Plaintiff and in favor of Defendants, the Illinois Department of Revenue (Department), the Champaign County Board of Review and its members, the Champaign County Supervisor of Assessments, the Champaign County Treasurer, and Champaign County (collectively, the "County Defendants") and the Cunningham Township Assessor, on Count I of the Fourth Amended Complaint on September 9, 2018.

2. Count II of the Fourth Amended Complaint was previously dismissed by Plaintiff pursuant to the decision of the Illinois Supreme Court in this cause, Carle Found. v. Cunningham Twp, 2017 IL 120427 (2017) on September 28, 2018.

3. With respect to Counts III through XXXIV, judgment is hereby entered against Plaintiff and in favor of the Department and the County Defendants.

4. With respect to Count XXXXV of the Fourth Amended Complaint, judgment is entered against Plaintiff and in favor of Cunningham Township and the City of Urbana.

5. Each party is to pay its own costs.

SO ORDERED this____ day of _____ , 2019

_____

Randall B. Rosenbaum,

Circuit Judge