

**IN THE SUPREME COURT OF MISSOURI**

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**No. SC88630**

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**MISSOURI STATE USBC ASSOCIATION , Appellant,**

**v.**

**DIRECTOR OF REVENUE, Respondent.**

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**ON PETITION FOR REVIEW  
FROM THE MISSOURI ADMINISTRATIVE HEARING COMMISSION  
THE HONORABLE JOHN KOPP, COMMISSIONER**

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**APPELLANT'S BRIEF**

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## JURISDICTIONAL STATEMENT

The issue presented by this appeal involves the construction of §§ 144.030.2(19) and 144.030.2(20),<sup>1</sup> which provide exemptions from sales and use tax for:

(19) All sales made by or to religious and charitable organizations and institutions in their religious, charitable or educational functions and activities . . . ; [and]

(20) . . . all sales made by or to not-for-profit civic, social, service or fraternal organizations, . . . in their civic or charitable functions and activities . . . .

Specifically, the issue before the Court in this case is the scope and meaning of the terms “charitable organizations,” “not-for-profit civic organizations” and “not-for-profit service organizations” as used in these statutes, and whether a nonprofit association that organizes statewide recreational activities and encourages participation in these activities by all members of the public is entitled to an exemption from sales and use tax under these provisions. This issue involves the construction of §§ 144.030.2(19) and 144.030.2(20), which are revenue laws of this state, and for this reason, this Court has exclusive jurisdiction pursuant to Article V, § 3 of the Missouri Constitution.

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<sup>1</sup> All statutory citations are to the Revised Statutes of Missouri of 2000, as amended, unless otherwise noted.

## STATEMENT OF FACTS

### 1. Introduction

At issue in this case is whether the Missouri State USBC Association (“Appellant”) is: (1) a not-for-profit civic organization within the meaning of Section 144.030.2(20); (2) a charitable organization within the meaning of Section 144.030.2(19); and (3) a not-for-profit service organization within the meaning of Section 144.030.2(20).

Appellant presented this issue to the Missouri Administrative Hearing Commission (the “Commission”) in a Motion for Summary Determination, pursuant to 1 CSR 15-3.440 (L.F. 112). The record in this case includes the Commission’s decision (L.F. 112-125; Appendix A1-14); an affidavit submitted to the Commission in support of Appellant’s Motion for Summary Determination with attached exhibits (“Bacorn Affidavit” and Affidavit Exhibits 1 – 8 ; L.F. 29 – 77); and eight exhibits submitted to the Commission by the Director of Revenue (the “Director”) with her response to the Motion for Summary Determination. The Director’s exhibits are: Appellant’s By-Laws (Resp. Ex. A); Appellant’s Responses to Respondent’s Interrogatories (Resp. Ex. B); an entry form for the 2007 Open Championship tournament sponsored by Appellant (Resp. Ex. C); Appellant’s Responses to Respondent’s First Request for Admissions (Resp. Ex. D); two brochures describing some of Appellant’s activities (Resp. Ex. E and F); Appellant’s scholarship applications (Resp. Ex. G); and a document describing Appellant’s requirements for hosting its state tournaments (Resp. Ex. H). Respondent’s Exhibits A, C, E, F, and G are documents that Appellant produced in response to Respondent’s discovery requests.

## **2. Appellant's Background**

Appellant is a Missouri nonprofit corporation and has been recognized as an organization that is exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code (“I.R.C.”) (Bacorn Affidavit ¶ 3, Affidavit Ex. 1; L.F. 113). Appellant is a state association affiliated with the United States Bowling Congress (“USBC”) (Bacorn Affidavit ¶ 3; L.F. 113). Appellant was organized in 2006 through the merger of three Missouri bowling associations: the Missouri State Bowling Association, the Missouri State Women’s Bowling Association, and the Missouri State Young American Bowling Alliance (Bacorn Affidavit ¶ 5; L.F. 113).

The three organizations that merged to become the Missouri State USBC Association had been in existence for many years prior to the merger. The Director issued each of these organizations a sales tax exemption letter as a “not-for-profit civic, social, service or fraternal organization” under Section 144.030.2(20) for their sales and purchases in connection with their “civic or charitable functions and activities” (Bacorn Affidavit ¶ 6; L.F. 113).

The three merging organizations joined together at the urging of and following the lead of Appellant’s national governing body, the USBC. All three organizations were offering many of the same services to their members. In the interest of fiscal responsibility, one organization took the place of three to handle the same services for everyone. The purpose and goals of the organizations did not change (Bacorn Affidavit ¶ 7; L.F. 113).

### **3. Appellant's Activities and Membership**

Appellant's principal activity (like that of each of its predecessor organizations) is to promote the sport of bowling in Missouri through the sponsorship of a number of statewide programs. Appellant reaches thousands of Missourians with its programs and in so doing, promotes physical activity and provides recreational opportunities (Bacorn Affidavit ¶ 14; L.F. 113).

Appellant's by-laws state that the purposes of the organization include, but are not limited to the following:

1. Providing equal opportunity for all in the sport of bowling without regard to race, religion, age, gender, disability, or national origin.
2. Promoting the game of American Tenpins [i.e., bowling].
3. Conducting and supporting bowling competition.
4. Engaging in any other activities permitted by an organization classified as exempt under Section 501(c)(3) of the IRC.

(Bacorn Affidavit ¶ 4; Affidavit Exhibit 1; L.F. 114; Resp. Ex. A).

Membership in Appellant is open to anyone, regardless of race, religion, age, gender, disability, or national origin. No one is turned away (Bacorn Affidavit ¶ 15; L.F. 114). Appellant currently has 75,164 members in Missouri (Bacorn Affidavit ¶ 18; L.F. 114).

When a person comes to a bowling center in Missouri and signs up to join a bowling league, he or she purchases for a nominal fee membership in three organizations: national, state, and local. The national organization is the USBC, the state organization is

Appellant, and the local organization is the local USBC association (Bacorn Affidavit ¶ 15; L.F. 114). In addition, the USBC web site allows anyone to join Appellant via the internet at [www.bowl.com](http://www.bowl.com) (Bacorn Affidavit ¶ 16; L.F. 114). The nominal fees paid for membership go to the national and local organizations; for its first fiscal year, August 1 2006 - July 31, 2007, Appellant charged its members no dues. Under its by-laws, the annual dues for adult members cannot exceed \$1.00 and the annual dues for youth members cannot exceed \$0.25 (Bacorn Affidavit ¶ 17; L.F. 114).

All age groups are encouraged to participate in the programs sponsored by Appellant. The physical activity of bowling is particularly beneficial to senior members in their “golden years.” It helps them stay active, both socially and physically. Youth participants just learning to bowl are taught valuable lessons including coordination, teamwork and cooperation through their participation in bowling. The physical activity of bowling is also beneficial to all members in helping prevent obesity (Bacorn Affidavit ¶ 19; L.F. 114 – 115).

One of the principal ways that Appellant promotes bowling is through the sponsorship of statewide bowling tournaments. The tournaments increase the level of interest in the sport by bringing large groups of people from throughout the state together to compete. The tournaments that Appellant organizes and promotes are:

1. The Women’s Annual Championship (72<sup>nd</sup> held in 2006), which averaged 829 five-women teams for the past five years.

Approximately 4,000 women spend six to eight weekends in the

spring at the host city for the tournament. The location of the tournament is selected annually from cities submitting proposals.

2. The Men's Championship or Open Tournament (57<sup>th</sup> held in 2006) averaged 621 teams of five for the past five years. The Open is generally conducted for eight to ten weekends, also in the spring at a host city in the state.
3. The Youth State Championship averages 465 teams for seven to nine weekends in March, April and May each year.
4. The Pepsi Youth Tournament which is a state qualifying event for the international Pepsi Youth Tournament and is held for three weekends in April. Approximately 600 to 700 youngsters bowl to advance to the next level of competition. Both youth tournaments offer only scholarships as prizes, as do the other youth tournaments held around the state each year.
5. Three other smaller state tournaments sponsored by Appellant are the: Men's Senior and Women's Senior events for those 55 and older, and the Mixed Team Championship. These three events are held annually in the fall. The average number of participants in the senior events is around 450 to 500. The average annual participation in the mixed team championships is around 400 to 450.

(Bacorn Affidavit ¶ 20; L.F. 115).

Bowlers pay modest entry fees to Appellant to participate in these competitions (L.F. 116). For example, the entry fee for the 2007 Men's Open Tournament was \$20.00 per event. This amount included all bowling and participation fees (Resp. Ex. C). Appellant pays bowling alleys a per-game, per player "lineage" fee for the use of bowling lanes needed to conduct the tournaments. In the past, Appellant's predecessor organizations presented their Missouri sales tax exemption certificates when paying these fees, and claimed an exemption from sales tax on the bowling fees paid to bowling alleys in connection with statewide bowling tournaments (Resp. Ex. D). If granted an exemption from sales tax, Appellant would claim this same exemption from tax when conducting bowling tournaments (Resp. Ex. D; L.F. 115).

Bowlers participating in the tournaments and anyone traveling with them patronize the bowling centers where these events are held, as well as local businesses in the host city. Their presence in the city hosting these events brings business to the local hotels, gas stations, restaurants, bars and shopping malls. The tournaments thus provide a benefit to the host city, and this also raises awareness of the sport of bowling and benefits the public as a whole (Bacorn Affidavit ¶ 21; L.F. 116).

Another activity sponsored by Appellant to promote the sport of bowling is the Bowlers Showcase and Annual Meeting held each year in Jefferson City. These events bring together leaders and members from all eighty-four local bowling associations in Missouri. Awards are given to honor and encourage members who have made a significant contribution to bowling. For youth members, Appellant awards scholarship

based on scholastic ability, community service, bowling ability and recommendations by teachers and coaches (Bacorn Affidavit ¶ 22; L.F. 116).

Other activities at the Bowlers Showcase include workshops, social events, and business meetings that keep members informed about Appellant's programs and services and provide resources to assist the local organizations in their activities (Bacorn Affidavit ¶ 23; L.F. 116).

Members attending the Bowlers Showcase travel to Jefferson City from throughout the state. Their presence in the host city contributes to local businesses, and increases awareness of the sport of bowling among the general public (Bacorn Affidavit ¶ 23; L.F. 116).

Appellant sponsors an awards program as a way to encourage participation in bowling and to publicize and promote the sport. Some of the awards it presents include: Missouri State USBC Volunteer of the Year, Missouri State USBC Bowler of the Year, Missouri State USBC Youth Bowler of the Year, and Missouri State USBC Proprietor of the Year. Also available to local association managers will be the Missouri State USBC Association Manager Recognition award (Bacorn Affidavit ¶ 24; L.F. 117).

In addition to its activities directly promoting the sport of bowling, Appellant supports a number of charitable causes through direct contributions and by encouraging contributions by local bowling organizations (L.F. 117). As a result of these efforts, donations are made each year by Appellant or the local organizations to: Special Olympics, the Susan G. Komen Breast Cancer Foundation, the Bowlers to Veterans Link and the International Bowling Museum and Hall of Fame. Fund raisers are held

throughout the state during tournaments, leagues and other events. During the four years prior to Appellant's organization, Appellant's predecessor organizations contributed \$8,500 to Special Olympics, \$7,777 to the Bowlers to Veterans Link, and \$13,447 to the International Bowling Museum and Hall of Fame. During that same period, the predecessor organizations contributed \$205 to the Susan G. Komen Breast Cancer Foundation in addition to encouraging local associations to make their own direct contributions. As a result, the local associations contributed thousands of dollars for breast cancer research (Bacorn Affidavit ¶ 25; L.F. 117). At the time its application for tax exempt status was submitted to the Director, Appellant was a newly formed organization, and thus had not begun all of its activities. Appellant included with the application its budget for 2006 – 2007 which provided \$1,000 for "donations" (L.F. 38, 50, 117).

When it submitted the application to the Director, Appellant was in the process of developing a number of educational activities, including youth programs. The planned youth activities include purchasing specially designed bowling equipment for use in elementary school physical education classes. This equipment will be donated to schools for the purpose of introducing children to the sport of bowling. Other activities were planned to provide educational opportunities and resources to the local bowling organizations to enhance their operations and outreach to the public (Bacorn Affidavit ¶ 26; L.F. 117 – 118).

Appellant is the only statewide organization providing these activities in Missouri. Without Appellant's organization, the people of this state would not have the opportunity

to participate in a Missouri state championship bowling competition. Although not everyone goes to the state tournaments, these competitions enhance the enjoyment of the sport for thousands of people. All of Appellant's activities serve to facilitate and encourage the public to participate in a wholesome recreational activity. Appellant's activities are open to and enjoyed by participants of all ages and all levels of bowling ability (Bacorn Affidavit ¶ 27; L.F. 118).

#### **4. Appellant's Application for Sales/Use Tax Exemption**

Appellant's executive director prepared an application for sales/use tax exemption (Form 1746), and submitted the completed form with all required documentation, to the Director (Bacorn Affidavit ¶ 8; L.F. 38, 118). On the first page of the application, Appellant indicated that it was a "not-for-profit social, service or fraternal organization." By letter dated August 14, 2006, the Director notified Appellant that it "does not qualify for a sales tax exemption" (Bacorn Affidavit ¶ 9; L.F. 53, 118). On September 11, 2006, Appellant submitted a letter to the Commission, appealing the denial of the application (Bacorn Affidavit ¶ 10; L.F. 1 – 3). Following the filing of the appeal, Appellant submitted additional information concerning its activities to the Director's General Counsel (Bacorn Affidavit ¶ 11; L.F. 56 – 59).

Appellant submitted a second application for exemption, claiming that it was a charitable organization, a not-for-profit civic organization, and a not-for-profit social, service or fraternal organization (L.F. 60 – 76, 118). The Director denied the second application for exemption on February 22, 2007 (L.F. 77, 118). Appellant appealed the denial of its second application to the Commission. That appeal is Commission case

number 07-0387 RS, and is currently pending before the Commission. Because Appellant's original application requested an exemption on the grounds that it is a not-for-profit service organization, the second application was submitted to ensure that all possible grounds for the exemption would be considered by the Director (Bacorn Affidavit ¶ 12).

## STATEMENT OF THE ISSUE

Section 144.030.2(19) and (20) provide exemptions from sales and use tax for “all sales made by or to . . . charitable organizations . . . in their . . . charitable or educational functions and activities . . . ; [and] . . . all sales made by or to not-for-profit civic, social, service or fraternal organizations, . . . in their civic or charitable functions and activities.”

Appellant is a not-for-profit organization whose principal purpose is to promote a recreational activity in Missouri. Its activities include organizing statewide bowling tournaments, fund raising for other charitable causes, and providing support and resources to local bowling associations. It encourages the general public to participate in its activities, and is open to all without regard to race, religion, age, gender, disability, or national origin. Is Appellant a “not-for-profit civic organization,” a “charitable organization,” or a “not-for-profit service organization” within the meaning of Section 144.030.2(19) and (20)?

## STANDARD OF REVIEW

The decision of the Commission shall be reversed if: (1) it is not authorized by law; (2) it is not supported by competent and substantial evidence; (3) a mandatory procedural safeguard is violated; or (4) it is clearly contrary to the reasonable expectations of the general assembly. Section 621.193; *Concord Publishing House, Inc. v. Director of Revenue*, 916 S.W.2d 186 (Mo. banc 1996). This Court's review of the law is *de novo*. *Zip Mail Services, Inc. v. Director of Revenue*, 16 S.W.3d 588, 590 (Mo. banc 2000). Because Section 144.030.2(19) and (20) are exemptions, they are to be construed strictly, but reasonably, against the taxpayer. *Iron County v. State Tax Commission*, 437 S.W.2d 665, 668 (Mo. banc 1968).

**POINT RELIED ON**

**THE ADMINISTRATIVE HEARING COMMISSION ERRED IN RULING THAT APPELLANT IS NOT ENTITLED TO A SALES AND USE TAX EXEMPTION UNDER SECTION 144.020.3(19) AND (20) BECAUSE THE DECISION IS NOT AUTHORIZED BY LAW UNDER SECTION 621.193, IN THAT APPELLANT PROMOTES THE SPORT OF BOWLING TO THE GENERAL PUBLIC BY ORGANIZING STATEWIDE SPORTING EVENTS AND OTHER ACTIVITIES FOR YOUTHS, ADULTS AND SENIORS, PROVIDES THE PUBLIC WITH THE OPPORTUNITY TO LEARN ABOUT AND PARTICIPATE IN A RECREATIONAL ACTIVITY, AND SUPPORTS OTHER CHARITABLE CAUSES, AND IN SO DOING:**

**(1) APPELLANT IS CONCERNED WITH AND CONTRIBUTES TO THE GENERAL WELFARE AND BETTERMENT OF LIFE OF ALL PEOPLE IN THIS STATE, AND ITS ACTIVITIES PLAY A ROLE IN THE FUNCTIONING, INTEGRATION, AND DEVELOPMENT OF A CIVILIZED COMMUNITY AND INVOLVE COMMON PUBLIC ACTIVITIES AND INTERESTS OF THE CITIZENS OF THIS STATE, AND THEREFORE APPELLANT IS A NOT-FOR-PROFIT CIVIC ORGANIZATION WITHIN THE MEANING OF SECTION 144.030.2(20);**

**(2) APPELLANT IS ENGAGED IN ACTIVITIES THAT BENEFIT THE PUBLIC AND SOCIETY IN GENERAL AND ARE THE TYPE OF ACTIVITIES**

**SUPPORTED BY GOVERNMENT, AND THEREFORE APPELLANT IS A CHARITABLE ORGANIZATION WITHIN THE MEANING OF SECTION 144.030.2(19); AND**

**(3) APPELLANT CONTRIBUTES TO THE WELFARE OF OTHERS AND SERVES THE PUBLIC INTEREST AND THEREFORE APPELLANT IS A NOT-FOR-PROFIT SERVICE ORGANIZATION WITHIN THE MEANING OF SECTION 144.030.2(20).**

*Indian Lake Property Owners Association v. Director of Revenue,*

813 S.W.2d 305 (Mo. banc 1991);

*Young Men's Christian Ass'n v. Sestric,*

362 Mo. 551, 242 S.W.2d 497 (Mo. banc 1951);

*City of St. Louis v. State Tax Commission,*

524 S.W.2d 839 (Mo. banc 1975);

*Hutchinson Baseball Enterprises, Inc. v. Commissioner of Internal Revenue,*

696 F.2d 757 (10<sup>th</sup> Cir. 1982);

Section 144.030.2(19);

Section 144.030.2(20).

## **ARGUMENT**

**THE ADMINISTRATIVE HEARING COMMISSION ERRED IN RULING THAT APPELLANT IS NOT ENTITLED TO A SALES AND USE TAX EXEMPTION UNDER SECTION 144.020.3(19) AND (20) BECAUSE THE DECISION IS NOT AUTHORIZED BY LAW UNDER SECTION 621.193, IN THAT APPELLANT PROMOTES THE SPORT OF BOWLING TO THE GENERAL PUBLIC BY ORGANIZING STATEWIDE SPORTING EVENTS AND OTHER ACTIVITIES FOR YOUTHS, ADULTS AND SENIORS, PROVIDES THE PUBLIC WITH THE OPPORTUNITY TO LEARN ABOUT AND PARTICIPATE IN A RECREATIONAL ACTIVITY, AND SUPPORTS OTHER CHARITABLE CAUSES, AND IN SO DOING:**

**(1) APPELLANT IS CONCERNED WITH AND CONTRIBUTES TO THE GENERAL WELFARE AND BETTERMENT OF LIFE OF ALL PEOPLE IN THIS STATE, AND ITS ACTIVITIES PLAY A ROLE IN THE FUNCTIONING, INTEGRATION, AND DEVELOPMENT OF A CIVILIZED COMMUNITY AND INVOLVE COMMON PUBLIC ACTIVITIES AND INTERESTS OF THE CITIZENS OF THIS STATE, AND THEREFORE APPELLANT IS A NOT-FOR-PROFIT CIVIC ORGANIZATION WITHIN THE MEANING OF SECTION 144.030.2(20);**

**(2) APPELLANT IS ENGAGED IN ACTIVITIES THAT BENEFIT THE PUBLIC AND SOCIETY IN GENERAL AND ARE THE TYPE OF ACTIVITIES SUPPORTED BY GOVERNMENT, AND THEREFORE APPELLANT IS A**

**CHARITABLE ORGANIZATION WITHIN THE MEANING OF SECTION  
144.030.2(19); AND**

**(3) APPELLANT CONTRIBUTES TO THE WELFARE OF OTHERS  
AND SERVES THE PUBLIC INTEREST AND THEREFORE APPELLANT IS A  
NOT-FOR-PROFIT SERVICE ORGANIZATION WITHIN THE MEANING OF  
SECTION 144.030.2(20).**

**1. Introduction**

The facts of this case are not in dispute. Appellant is an organization that does what a city parks and recreation department would typically do, only on a larger scale: it promotes state-wide participation in an organized sport. Appellant does this, in part, by organizing state-wide tournaments for seniors, adults and youth. Bacorn Affidavit ¶¶ 14, 20; L.F. 113, 115. Appellant is the only such organization in this state, and thus, without its activities, there would be no state-wide recreational bowling competitions in Missouri. Bacorn Affidavit ¶ 27; L.F. 118. Through its predecessor organizations, it has engaged in these activities for many years. The Director had long recognized the civic nature of these activities, as evidenced by the fact that the Director granted sales tax exemption certificates to the predecessor organizations under Section 144.030.2(20). Notwithstanding the Commission’s suggestion to the contrary, there is no evidence in the record that indicates that the letters of exemption issued to the predecessor organizations were “improvidently granted.” L.F. 119.

While the individuals who participate in Appellant’s activities are recognized as “members,” the scope of Appellant’s potential membership encompasses all citizens of

this state. Appellant is in no sense exclusive, but is open to everyone without regard to race, religion, age, gender, disability or national origin. As stated in its by-laws, Appellant's chief purpose is "[p]roviding equal opportunity **for all** in the sport of bowling . . ." (emphasis added). Consistent with this objective, Appellant allows individuals who are not "members" to enter its tournaments. *See* Respondent's Ex. B, Interrogatory 12; Respondent's Ex. C, p. 2, ¶ 1. Appellant is not organized for financial profit, or to enhance the material wealth of its members. It charges no dues. While some of its activities require the payment of nominal or modest fees, it is simply not reasonable to conclude that these fees bar the general public from participating in Appellant's activities. Based on the undisputed facts of this case, it is clear that Appellant welcomes the participation of all the citizens of this state in its activities. Over 75,000 Missourians directly benefit from participating in Appellant's activities, all others have the opportunity to participate and also may benefit indirectly from the participation of their children, parents, spouses, friends or neighbors.

As these facts demonstrate, Appellant is not an unusual organization. It is similar to the many other not-for-profit sports associations in this state that promote participation by children and adults in sports such as soccer, baseball, basketball, volleyball or swimming.

At issue in this case is whether these facts support the conclusion that Appellant is a not-for-profit civic organization within the meaning of Section 144.030.2(20) and thus entitled to an exemption from sales and use tax with respect to its purchases and sales made in connection with its civic and charitable functions. This case also presents the

issues of whether Appellant is entitled to an exemption from sales and use tax on its sales and purchases its exempt purposes as a charitable organization within the meaning of Section 144.030.2(19) and a not-for-profit service organization within the meaning of Section 144.0303.2(20).

## **2. Appellant is a Not-for-Profit Civic Organization**

### **a. Appellant Meets the Definition of “Civic”**

As noted above, Appellant’s predecessor organizations were recognized by the Director as being exempt from sales and use tax under Section 144.030.2(20). This section provides an exemption from sales and use tax for: “all sales made by or to **not-for-profit civic**, social, service or fraternal organizations, including fraternal organizations which have been declared tax-exempt organizations pursuant to Section 501(c)(8) or (10) of the 1986 Internal Revenue Code, as amended, in their civic or charitable functions and activities.” (Emphasis added).

Appellant is a Missouri nonprofit corporation, recognized by the Internal Revenue Service as an organization exempt from income tax under I.R.C. Section 501(c)(3). There is no dispute in this case that Appellant operates on a not-for-profit basis. Bacorn Affidavit ¶ 4, Exhibit 1. The issue before the court is whether its function is primarily “civic” in nature.

The statutes do not define the term “civic” for the purposes of this exemption. This Court considered the meaning of this term in *Indian Lake Property Owners Association v. Director of Revenue*, 813 S.W.2d 305, 308 (Mo. banc 1991), and cited the following definition of “civic” in the context of Section 144.030.2(20):

“Forming a component of or connected with the functioning, integration, and development of a civilized community (as a town or city) involving the common public activities and interests of the body of citizens . . . concerned with or contributory to general welfare and the betterment of life for the citizenry of a community or enhancement of its facilities; *esp*: **devoted to improving health, education, safety, recreation, and morale of the general public** through nonpolitical means[.]”

*Indian Lake Property Owners* at 308, (quoting *Webster’s Third New Int’l Dictionary*, 412 (1986) (emphasis added)).

The organization at issue in *Indian Lake Property Owners* was a homeowners’ association. This Court concluded that its activities were not directed toward the “citizenry at large.” *Id.* Instead, the association’s activities were directed “solely toward protecting the value and access to private property” which was not a civic function. *Id.* This Court noted that the association had done everything it could to “create a private environment and exclude nonmembers from any benefits.” *Id.*

Appellant, on the other hand, meets this definition of “civic” precisely. Appellant provides to **all** citizens of this state, without discrimination, the opportunity to learn about and participate in the recreational activity of bowling. Bacorn Affidavit ¶ 15; L.F. 114. Participants in this sport benefit from the physical activity as well as the social contacts it provides. Bacorn Affidavit ¶ 19; L.F. 114. As noted above, even those who do not participate in Appellant’s activities have the **opportunity** to do so; Appellant is open to

all and does not discriminate on the basis of race, religion, age, gender, disability, or national origin. Bacorn Affidavit ¶ 15; L.F. 114. Moreover, those who chose not to participate in Appellant’s activities may receive a benefit from the participation of their children, neighbors or grandparents—and thus Appellant’s activities enhance the quality of life for the community as a whole. Thus in promoting this sport, Appellant is concerned with and contributes to the “general welfare and betterment of life” of all citizens in this state. *Indian Lake Property Owners* at 308. By organizing and sponsoring statewide bowling tournaments and annual meetings, Appellant brings people from all parts of the state together to engage in recreational, educational and social activities. Bacorn Affidavit ¶¶ 20, 23, 24; L.F. 115 – 116. The cities that host Appellant’s events benefit from the commercial activity these events generate for their hotels, restaurants, stores and gas stations. Bacorn Affidavit ¶ 21; L.F. 116. In organizing these events, Appellant plays a role in the “functioning, integration and development of a civilized community.” *Indian Lake Property Owners* at 308.

**b. Appellant Serves the “Public”**

Consistent with this Court’s definition of “civic,” the Commission’s decision in this case emphasized that any exemption from sales tax “must be founded upon a reason **public** in nature” and must “serve a **public**, as distinguished from a private interest.” L.F. 119 (quoting *State ex rel. Transport Mfg. & Equipment Co. v. Bates*, 224 S.W.2d 996, 1000 (Mo. banc 1949)) (emphasis added). In finding that Appellant is not a civic organization, however, the Commission erroneously concluded that Appellant’s “activities are to protect wholly private interests” and that it does not serve the “citizenry

at large.” L.F. 123. As support for this conclusion, the Commission pointed out that “people must pay for a membership card for the local, state and national organizations and must pay the costs to participate in the sport.” L.F. 124. Under the Commission’s approach in this case, it is difficult to conceive of any organization that would qualify for the sales tax exemption of Section 144.030.2(20). In effect, the Commission’s decision precludes any sports association from obtaining a sales tax exemption—unless **all** members of the public participate in its activities, and no fees of any kind are charged for participation.

The rationale applied by the Commission’s in this case is contrary to this Court’s view of what constitutes service to “the public.” In *J. B. Vending Co., Inc. v. Director of Revenue*, 54 S.W.3d 183, 186 (Mo. banc 2001), this Court explained:

The word “public” conveys several meanings. While the word “public” can refer to the entire populace, it can also refer to “[a] particular body or section of the people; often, . . . a clientele . . .” Webster’s New Int’l Dictionary 2005 (2d Ed. 1952). It can also refer to “a group of people distinguished by common interests or characteristics.” Webster’s Third New Int’l Dictionary 1836 (1993). “In another sense the word does not mean all the people, nor most of the people, nor very many of the people of a place, but so many of them as contradistinguishes them from a few.” Black’s Law Dictionary 1227 (6th Ed. 1990).

This Court further explained that “an entity can be said to serve the public even if it serves only a subset or segment of the public.” 54 S.W.2d at 186. In the context of

commercial services, “[t]he test is whether [the business] has invited the trade of the public . . . But, ‘the public does not mean everybody all the time.’” *Id.* at 187, (quoting *State ex rel. Anderson v. Witthaus*, 102 S.W.2d 99, 102 (Mo. banc 1937)). Similarly, with respect to the issue of eminent domain, “this Court has found that ‘public’ use includes a use that benefits a particular group of persons. ‘[I]t is not necessary that the *whole* community or any large part of it should actually use or be benefited by a contemplated improvement. Benefit to any considerable number is sufficient.’” *Id.* (quoting *Arata v. Monsanto Chemical Co.*, 351 S.W.2d 717, 721 (Mo. 1961)). As these cases demonstrate, a business or other organization serves “the public” when it serves a segment of the population.

The decision in *Eden Hall Farm v. United States*, 389 F. Supp. 858 (D.C. Pa. 1975), is also instructive on this issue. At issue in *Eden Hall Farm* was the application of I.R.C. Section 501(c)(4), which provides an exemption from taxation for “**civic** leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare.” (Emphasis added). This exemption from federal income tax is similar to Section 144.030.2(20), in that to qualify for the exemption, a taxpayer must establish that it “is primarily engaged in promoting in some way the common good and general welfare of the people of the community.” 389 F. Supp. at 861. The organization at issue in *Eden Hall Farm* operated a rural vacation retreat for working women. The Internal Revenue Service asserted that the organization did not serve the general welfare of the community, since the guests at the facility were primarily employees of one corporation. The Court rejected this assertion, stating: “The government seems to suggest in its argument that

because the [organization] did not advertise that all working women were invited, Eden Hall would not qualify. This is not the law.” *Id.* at 866. The Court further explained that “when one segment or slice of the community, in this case thousands of working women of the Pittsburgh and Allegheny County area are served, **then the community as a whole benefits.**” *Id.* (emphasis added). In other words, it is not necessary to provide a direct service to every person in a community to be considered a “civic” organization.

In the instant case, these principles compel the conclusion that Appellant serves the “public” as opposed to merely private interests. Although not everyone participates in its activities, there is unquestionably a “benefit to [a] considerable number.” *Arata v. Monsanto Chemical Co.*, 351 S.W.2d 717, 721 (Mo. 1961). The Commission’s decision fails to recognize the broad scope of Appellant’s activities. The record in this case supports the conclusion that Appellant reaches out to **all** of the citizens of the state; its activities are focused on serving the public and provide all Missourians with the opportunity to learn about and participate in the recreational activity of bowling. By serving those that chose to participate, Appellant is serving the entire community. *Eden Hall Farm v. United States*, 389 F. Supp. 858, 866 (D.C. Pa. 1975). This is a civic function. *Indian Lake Property Owners Association v. Director of Revenue*, 813 S.W.2d 305 (Mo. banc 1991).

**c. Appellant’s Collection of Fees Does Not Affect Its Tax-Exempt Status**

The fact that Appellant collects modest fees from the participants in its activities does not change this conclusion. This Court has long recognized that tax exempt organizations, including charitable organizations exempt from property taxes, do not lose

their tax exempt status simply because they collect fees from the individuals who benefit from their services. For example, in *Young Men’s Christian Ass’n v. Sestric*, 362 Mo. 551, 242 S.W.2d 497 (Mo. banc 1951), this Court considered whether the property of the Y.M.C.A. of St. Louis was used for “purely charitable purposes” within the meaning of the property tax exemptions in Article X, Section 6 of the Missouri Constitution and Section 137.100. In addition to recreational activities, the Y.M.C.A. operated residence halls and cafeterias. 242 S.W.2d at 500 – 502. It charged fees for these services, and required patrons to become members of the organization. *Id.* This Court ruled that the Y.M.C.A. was a charitable organization. Although this case involved an exemption from property tax, it was cited with approval in *St. John’s Medical Center v. Spradling*, 510 S.W.2d 417, 419 (Mo. banc 1974), which is a sales tax case. Similarly, in *Director of Revenue v. St. John’s Regional Health Center*, 770 S.W.2d 588, 590 (Mo. banc 1989), this Court ruled that a fitness center operated by a hospital through which the hospital “conducts outreach programs designed to educate the community regarding healthy lifestyles” was a charitable organization for sales tax purposes under Section 144.020.2(19). The charitable nature of these activities was not affected by the fact that fitness center collected a flat monthly fee from all participants in its programs. *Id.* As these cases illustrate, the tax exempt status of an organization turns on the organization’s primary purpose—not whether the organization collects fees from the individuals who benefit from its activities.

In this case, Appellant’s primary purpose is to promote participation by the public in a wholesome recreational activity. This is a civic function. The fact that participants

in Appellant’s activities pay modest fees does not change the primary civic nature of its functions, and therefore should not disqualify Appellant from the exemption provided by Section 144.030.2(20).

### **3. Appellant is a Charitable Organization**

In addition to meeting the criteria of a “not-for-profit civic organization” within the meaning of Section 144.030.2(20), Appellant also meets the requirements of a “charitable organization” pursuant to Section 144.030.2(19). This subdivision provides an exemption for: “all sales made by or to religious and charitable organizations and institutions in their religious, charitable or educational functions and activities . . . .”

Like the term “civic,” the word “charitable” as used in Section 144.030.2 is not defined by the sales tax statutes. This Court, however, has applied the following definition to this term:

“Probably the most comprehensive and carefully drawn definition of a charity that has ever been formulated is that it is a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their hearts under the influence of education or religion, by relieving their bodies from disease, suffering, or constraint, by assisting them to establish themselves for life, or by erecting or maintaining public buildings or works or otherwise lessening the burdens of government . . . . A charity may restrict its admissions to a class of humanity, and still be public; it may be for the blind, the mute, those suffering under

special diseases, for the aged, for infants, for women, for men, for different callings or trades by which humanity earns its bread, and as long as the classification is determined by some distinction which involuntarily affects or may affect any of the whole people, although only a small number may be directly benefited, it is public.”

*Salvation Army v. Hoehn*, 188 S.W.2d 826, 830 (Mo. 1945) (quoting *In re: Rahn’s Estate*, 291 S.W. 120, 128 (Mo. 1926)).

In *City of St. Louis v. State Tax Commission*, 524 S.W.2d 839 (Mo. banc 1975), this Court explained that the words ““otherwise lessening the burdens of government”” as used in this definition do *not* require taxpayers to prove that their “specific activity . . . was one which government has the burden to provide.” *Id.* at 845. Instead, it is only necessary to show that the activities fall within a “category of activities” provided by the government. *Id.* In this case, Appellant organizes activities like those provided by park boards and other municipal recreation departments. See *Decatur Sports Foundation v. Department of Revenue*, 532 N.E.2d 576, 582-583 (Ill. App. 1988) (organization that owns softball fields “reduces the burden of government by privately supplementing public recreation facilities” and is a charitable organization under the same definition of “charity” as applied by Missouri’s courts). In addition, although this definition uses the word “gift,” a “charity” may collect fees for the services it provides, as explained above. See *Young Men’s Christian Ass’n v. Sestric*, 362 Mo. 551, 242 S.W.2d 497 (Mo. banc 1951), *Director of Revenue v. St. John’s Regional Health Center*, 770 S.W.2d 588, 590 (Mo. banc 1989). The term “gift” is used in this definition because the language quoted

is from the Missouri Supreme Court's decision in *In re Rahn's Estate*, 316 Mo 492, 511, 291 S.W. 120, 128 (Mo, 1926), which deals with the definition of "charity" in the context of a bequest or donation.

Based on these authorities, this Court's definition of "charitable" can be paraphrased as: having the primary purpose of promoting the moral, spiritual, physical or social well being of the public, or some segment of the public, and in so doing, performing activities that fall within a general category of services provided by the government.

As the Commission noted in its decision, there are only two reported Missouri court cases involving the charitable exemption for Missouri sales and use tax. L.F. 121 (citing *St. John's Medical Center v. Spradling, supra*, and *Director of Revenue v. St. John's Regional Health Center, supra*). As noted above, one of these cases involved a fitness center that was operated by a hospital. *Director of Revenue v. St. John's Regional Health Center*, 779 S.W.2d at 589 – 590. The operations of the not-for-profit fitness center, like Appellant's activities, promoted exercise and physical activity. *Id.* at 590. Neither of these cases, however, involves a not-for-profit organization similar to Appellant. A recent Commission decision provides an example of the proper application of this exemption in the context of an organization dedicated to promoting a recreational activity. In *Missouri Storytelling, Inc. v. Director of Revenue*, No. 04-0284 RS (Mo. Admin. Hrg. Comm'n, 03/02/2005), the Commission considered whether a statewide organization dedicated to storytelling met the criteria of a "charitable organization" within the meaning of Section 144.030.2(19). The Commission noted that the

determinative issue in deciding whether an organization is charitable is: “the public versus the private benefit of the specific activities.” *Id.* at 8.

In concluding that the activities of the storytelling organization were charitable, the Commission cited a number of cases from other jurisdictions that are instructive here. For example, in *Department of Revenue & Taxation of Wyoming v. Casper Legion Baseball Club*, 767 P.2d 608 (Wyo. 1989), the court found that an organization supporting youth baseball programs met the definition of “charitable.” The court noted that by providing all youths with the opportunity to try out for a team (even though not everyone “made the team”), the organization was providing a “positive physical, social and moral experience through competitive sports . . . . This in turn provides a general public benefit to the [local communities] in terms of the physical, social and moral well-being of the youth in those communities.” *Id.* at 611. The Commission’s decision in the *Missouri Storytelling* case also cited *Eugene Garden Club v. Lane County Dep’t of Assessment & Taxation*, 2001 WL 1012729 (Or. Tax Ct., Aug. 7, 2001), in which a gardening club was found to be tax exempt. The court noted that the club’s activities were “open to the public without regard to race, creed, age, or sex.” *Id.* at 3. Moreover, the club was administered in a way that “reached out to the public.” *Id.* Its activities helped society by “promoting citizens who understand the importance of plants to the existence of mankind.” *Id.* Another case cited by the Commission found a charitable purpose in producing plays and musicals, noting that “[t]hese activities are of a type often supported by government, as witness the opera houses, municipal auditoriums, and orchestras maintained or supported by our cities.” *Stockton Civic Theatre v. Board of*

*Supervisors of San Joaquin Co.*, 423 P.2d 810, 815 (Cal. 1967). And a theatre that gave away tickets to the movies was found to be charitable because it “lessened the burden of government by keeping children ‘off the streets,’ and provided a gift of recreational activity to an unrestricted audience.” *Missouri Storytelling*, at 10-11 (citing *Paradise Community Center Ass’n v. County of Kanabec*, 2004 WL 192978 (Minn. Tax Ct., Jan. 20, 2004)).

The Commission’s decision in *Missouri Storytelling* summarized these cases by stating that they have a “common theme.” *Missouri Storytelling* at 11. As the Commission explained: “In order to be considered a charitable organization, the benefit to the public must be clearly shown and must not be secondary or incidental to a private purpose.” *Id.* Appellant’s activities in the instant case meet this standard. Membership in Appellant is open to all. Appellant’s by-laws clearly state that one of its chief aims is to provide “equal opportunity for all in the sport of bowling without regard to race, religion, age, gender, disability, or national origin.” Bacorn Affidavit Exhibit 1; L.F. 114. Appellant’s activities, like those described in *Casper Legion Baseball Club*, are designed to provide a “positive physical, social and moral experience through sports.” *Casper Legion Baseball Club* at 611. In rewarding the youth who participate in its tournaments, it awards scholarships rather than other types of prizes, and thereby encourages education. Bacorn Affidavit ¶ 20d; L.F. 115. This Court has recognized that promoting education is a “charitable” activity. *See City of St. Louis v. State Tax Commission*, 524 S.W.2d 839, 845 (Mo. banc 1975). In addition to these charitable activities, Appellant is committed to raising funds for other charitable causes including

Special Olympics, the Susan G. Komen Breast Cancer Foundation, the Bowlers to Veteran's Link and the International Bowling Museum and Hall of Fame. Bacorn Affidavit ¶ 25; L.F. 117. Moreover, the statewide tournaments organized and sponsored by Appellant are the type of activities supported by government, such as public parks and recreation departments. *See Decatur Sports Foundation v. Department of Revenue*, 532 N.E.2d 576, 582-583 (Ill. App. 1988).

The United States Court of Appeals decision in *Hutchinson Baseball Enterprises, Inc. v. Commissioner of Internal Revenue*, 696 F.2d 757 (10<sup>th</sup> Cir. 1982), is also instructive in this case. At issue in *Hutchinson Baseball* was an organization that owned and promoted an adult amateur baseball team, leased and maintained baseball fields, and furnished instructors for baseball camps and Little League baseball teams. The stated purpose of the organization was “to ‘promote, advance and sponsor baseball, which shall include Little League and Amateur Baseball, in the Hutchinson, Kansas area.’” *Id.* at 758. The organization applied for an exemption from income tax under I.R.C. Section 501(c)(3). The Internal Revenue Service granted the organization an exemption in 1973, and then revoked it in 1975. At that time, I.R.C. Section 501(c)(3) did not include the express exemption for organizations that “foster national or international amateur sports competition” which is currently part of the law and was added in 1976. 676 F.2d at 760. In considering whether the organization was “charitable” the court noted that “[i]n its broader meaning, charity . . . embraces any benevolent or philanthropic objective not prohibited by law or public policy which tends to advance the well-doing and well-being of man.” *Id.* at 761 (quoting *Peters v. Commissioner*, 21 T.C. 55, 59 (1953)). Based on

the plain language of the statute, the Court of Appeals concluded that the lower court “reached the right conclusion in holding that ‘the furtherance of recreational and amateur sports, falls within the broad outline of ‘charity’ and should be so classified.’” *Id.* at 762 (quoting *Hutchinson Baseball Enterprises, Inc. v. Commissioner*, 73 T.C. 144, 153 (1980)). The Court’s decision was based in part on the view that an organization that promotes sports to children is performing an educational function. *Id.* at 761. As noted above, educational activities are considered “charitable” functions under Missouri law as well. *See City of St. Louis v. State Tax Commission*, 524 S.W.2d 839, 845 (Mo. banc 1975).

As these authorities demonstrate, Appellant’s activities in promoting the sport of bowling are “charitable” within the meaning of Section 144.030.2(19) and this subdivision provides an additional basis for finding that Appellant is entitled to an exemption from sales and use taxes on its sales and purchases made in connection with its educational and charitable functions.

#### 4. **Appellant is a Not-for-Profit Service Organization**

The sales and use tax exemption in Section 144.030.2(20) applies to “all sales made by or to not-for-profit civic, social, **service** or fraternal organizations, including fraternal organizations which have been declared tax-exempt organizations pursuant to Section 501(c)(8) or (10) of the 1986 Internal Revenue Code, as amended, in their civic or charitable functions and activities.” Under this section, an entity can qualify for a sales and use tax exemption if it is a “not-for-profit . . . service . . . organization.”

This Court has not considered the meaning of the term “service organization” for the purposes of this statute. In *The Missouri Branch of the American Society for Microbiology v. Director of Revenue*, No. RS-87-0938, 1988 WL 152884 at 3 (Mo. Admin. Hrg. Comm’n, 4/13/1988), the Commission concluded that the plain and ordinary meaning of the term “service organization” is simply “an organization which contributes to the welfare of others.” This is consistent with the plain meaning of the word “service” which as the Commission noted in this case has been defined as:

**1 a :** the occupation or function of serving <in active ~> . . . **2 a :** the work performed by one that serves <good ~> **b :** HELP, USE, BENEFIT <glad to be of ~> **c :** contribution to the welfare of others[.]

L.F. 124 (quoting Merriam-Webster’s Collegiate Dictionary 1137 (11<sup>th</sup> ed. 2004)).

In *Missouri Branch of the American Society for Microbiology*, the Commission held that an organization that was open to any person interested in microbiology met this definition. The organization’s principal activity was “an annual meeting where students, educators, and other interested persons participate in the scientific and business program and where businesses display items of interest to microbiology.” *Id.* at 2. The organization also presented awards to students and assisted schools in finding science fair judges. *Id.* The Commission noted that the organization had been found to be exempt from federal taxes under Section 501(c)(3) of the Internal Revenue Code as a “scientific or educational organization.” *Id.* at 2. The Commission stated that “[g]iven the federal government’s conclusion that Appellant serves a public interest, we conclude that it is a not-for-profit service organization.” *Id.* at 3.

The same can be said of the Appellant in the instant case. Its activities serve the public interest by: promoting a wholesome recreational activity, providing resources and assistance to local bowling organizations so that they may also promote bowling to the public at large, and raising funds for charitable causes. Appellant thus qualifies for an exemption as a “not-for-profit service organization” within the meaning of Section 144.030.2(20).

### **CONCLUSION**

Appellant is a not-for-profit civic organization within the meaning of Section 144.030.2(20), a charitable organization within the meaning of Section 144.030.2(19), and a not-for-profit service organization within the meaning of Section 144.030.2(20). The Director’s final decision denying Appellant’s application for a sales/use tax exemption letter, and the Commission’s ruling upholding the Director’s decision, are: (1) not authorized by law; (2) not supported by competent and substantial evidence; and (3) clearly contrary to the reasonable expectations of the legislature with respect to the meaning of Sections 144.030.2(19) and (20). Appellant respectfully requests that this Court rule that Appellant is an entity that is exempt from Missouri sales and use tax.

Respectfully submitted,

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Dated: \_\_\_\_\_

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## **CERTIFICATE OF SERVICE AND COMPLIANCE**

I hereby certify that one true and accurate copy of the foregoing, as well as a labeled disk containing the same, were hand-delivered this 22nd day of October, 2007 to:

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I hereby further certify that the foregoing brief complies with Rule 55.03 and with the limitations contained in Rule 84.06(b), in that it contains 10,160 words.

I hereby further certify that the labeled disk, simultaneously filed with the hard copies of the briefs, has been scanned for viruses and is virus-free.

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