

PT 07-10

Tax Type: Property Tax

Issue: Charitable Ownership/Use

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

TRINITY LEARNING CENTER, INC.,

APPLICANT

v.

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

No. 05 PT 0061

Real Estate Exemption

For 2004 Tax Year

P.I.N.S 11-23-452-001,

11-23-452-002 thru 11-23-452-005,

11-23-385-003 thru 11-23-385-005

Winnebago County Parcels

Kenneth J. Galvin

Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Ms. Charlotte A. LeClercq and Mr. Thomas A. Green, Barrick, Switzer, Long, Balsley & Van Evera, on behalf of Trinity Learning Center, Inc.; Mr. John Alshuler, Special Assistant Attorney General, on behalf of the Department of Revenue of the State of Illinois.

SYNOPSIS:

This proceeding raises the issue of whether 43% of the building, site and parking located on Winnebago County Parcel Index Numbers 11-23-452-001, 11-23-452-002 through 11-23-452-005 and 11-23-385-003 through 11-23-385-005 (hereinafter the "subject property") qualifies for exemption from 2004 real estate taxes under 35 ILCS 200/15-65, wherein all property used for charitable and beneficent purposes and not leased or otherwise used with a view to profit is exempt.

The controversy arises as follows: On September 15, 2004, Trinity Learning Center, Inc. filed an Application for Property Tax Exemption for tax year 2004 with the

Winnebago County Board of Review (hereinafter the "Board"). Dept. Ex. No. 1. The Board reviewed the application and subsequently recommended to the Illinois Department of Revenue (hereinafter the "Department") that a full year exemption be granted for the subject property. The Department partially accepted the Board's recommendation in a determination dated August 4, 2005, finding that 57% of the building, site and parking was exempt and 43% of the building, site and parking was taxable as "property is not in exempt use." Dept. Ex. No. 1. The 57% exempt portion of the subject property consisted of Cornucopia Food Pantry, LaVoz Latina, a gymnasium and a community meeting place. The 43% nonexempt portion of the subject property consisted of Trinity Day Care, a childcare center. On September 2, 2005, the applicant filed a timely request for a hearing as to the denial of the exemption for the childcare center.

On September 11, 2006, Trinity Learning Center presented evidence at a formal hearing with Pastor Len Hoffman of Trinity Lutheran Church and a member of the Board of Directors of Trinity Learning Center, and Danielle Ritter, Director of Marketing and Parent Relations for Trinity Day Care as of September, 2005, testifying. Tr. p. 81. Because 57% of the subject property had been found to be exempt which indicated that Trinity Learning Center was, in fact, a charitable organization, the evidentiary hearing was limited to the sole issue of whether the use of 43% of the property by Trinity Day Care constituted charitable use of the subject property. Tr. pp. 48-49. Following submission of all evidence and a careful review of the record and the "Applicant's Closing Brief," the "Department's Brief," and the "Applicant's Reply," it is recommended that the Department's determination that 43% of the building, site and

parking located on the subject property was not in exempt use during 2004 should be affirmed.

FINDINGS OF FACT:

1. Dept. Ex. No. 1 establishes the Department's jurisdiction over this matter and its position that 43% of the subject property and parking was not in exempt use in 2004. Tr. p. 18; Dept Ex. No. 1.
2. Trinity Day Care occupies 18,324 square feet (43%) of the 42,166 total square footage of the subject property. Tr. pp. 39-40; App. Ex. No. 10.
3. The construction of the building on the subject property was funded by private contributions, a grant from the City of Rockford, a \$4 million bond issue, and a \$1.2 million loan from Trinity Lutheran Church. Total construction costs were \$5.274 million, of which \$2.4 million was attributable to the childcare center on the property. Tr. pp. 24-27, 58-59; App. Ex. No. 8.
4. Trinity Learning Center, the owner of the subject property, is separately incorporated from Trinity Lutheran Church. Trinity Learning Center was incorporated for purposes of owning the building, collecting rents and managing the facility. Trinity Learning Center has an independent Board of Directors. Tr. pp. 55, 57, 59-60, 62.
5. When the building on the subject property was being constructed, it was anticipated that the tenants would be LaVoz Latina, Cornucopia Food Pantry and Little People's Place, a childcare center. Little People's Place went out of business and never moved into the building. After Little People's Place went out of business, Trinity Lutheran Church's Council voted to establish a childcare program using the space on the subject property. Tr. pp. 26-29, 30-31, 61-62; App. Ex. No. 1.

6. From May, 2003, through June, 2005, which covers the 2004 assessment year at issue in these proceedings, Trinity Lutheran Church operated the daycare facility as “Trinity Day Care.” Tr. pp. 31-34, 55, 62-63.
7. The “Profit and Loss” Statement for Trinity Day Care for the period May, 2003, through June, 2004, shows Total Income of \$843,483, a Lease Payment of \$203,523, and a Net Loss of \$210,608. The “Profit and Loss” Statement for July, 2004, through June, 2005, shows Total Income of \$902,113, a Lease Payment of \$203,523, and a Net Loss of \$172,647. Tr. pp. 35-36; App. Ex. Nos. 2 and 3.
8. Of the Total Income of \$843,483 for May, 2003, through June, 2004, 76% came from the State of Illinois including \$552,693 from the Department of Human Services, \$58,391 from the “Child Care Food Subsidy Program” and \$33,482 from the Department of Children and Family Services’ Protective Service Award for children in foster care and 21% (\$180,924) of Total Income came from Parent Fees. Of the Total Income of \$902,113 for July, 2004 through June, 2005, 81% came from the State of Illinois including \$580,852 from the Illinois Department of Human Services, \$89,928 from the “Child Care Food Subsidy Program,” and \$59,811 from Protective Service Awards and 18% (\$160,948) came from Parent Fees. Tr. pp. 50-52; App. Ex. Nos. 2 and 3.
9. Trinity Learning Center and Trinity Day Care entered into a lease dated June 19, 2003. Article IV of the lease required Trinity Day Care to pay rent of \$16,960/month or \$203,520/year to Trinity Learning Center. The rent consists of two components: the build-out cost for the childcare center amortized over a 20 year period plus interest and the common area costs shared among all occupants of the facility except

Cornucopia Food Pantry. “Build-out” costs are the costs used to establish the inside of the space, including doors, windows, floors, fixtures, and permanent structures. Article IV of the lease also requires that any tenant that is unable to obtain a property tax exemption shall be responsible for the property taxes, which “shall be considered to be additional rent.” Tr. pp. 36-39, 60-66; App. Ex. No. 6.

10. Parents who have been approved for childcare benefits under the “Child Care Assistance Program” of the Illinois Department of Human Services are required to pay a “co-pay” for the cost of childcare. This co-pay is paid directly to the childcare provider. The Department of Human Services publishes a list of required co-pays based on family size and monthly income. Some parents are not required to pay a co-pay based on the State’s determination. Tr. pp. 80-81, 85, 89-90; App. Ex. No. 17.
11. Trinity Day Care serves children from six weeks to 12 years old. The capacity is limited to 214 children and there are currently 209 children enrolled. Tr. pp. 88-89.
12. Trinity Day Care’s “Parent Handbook” states that parents of newly enrolled students are required to pay Trinity the first two weeks of fees upon enrollment. Tr. pp. 90-91; App. Ex. No. 16.
13. Trinity Day Care’s Parent Handbook lists “full fee rates” as follows: Children 6 weeks to 2 years; \$37.25 daily/\$186.25 weekly; 3 years to 5 years; \$25.00 daily/\$125 weekly; School age; \$12.50 daily/\$62.50 weekly; Vacation/Summer: \$25.00 daily/\$125.00 weekly. Approximately 20% of the currently enrolled children at Trinity Day Care pay the full fee and 80% have their fees subsidized by the State. Tr. pp. 97-100; App. Ex. No. 16.

14. Trinity Day Care's Parent Handbook states that if fee payments are not kept current, "we will terminate day care services and take further action to collect payment." The Parent Handbook also states that a late charge fee of \$15.00 is assessed for every part of 15 minutes that a parent is late picking up their child. "Late fees must be paid prior to child's next day of attendance." Tr. p. 106; App. Ex. No. 16.

CONCLUSIONS OF LAW:

An examination of the record establishes that Trinity Learning Center has not demonstrated, by the presentation of testimony, exhibits and argument, evidence sufficient to warrant an exemption for the 43% of the building, site and parking used by Trinity Day Care during the 2004 assessment year. In support thereof, I make the following conclusions.

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

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The General Assembly may not broaden or enlarge the tax exemptions permitted by the constitution or grant exemptions other than those authorized by the constitution. Board of Certified Safety Professionals v. Johnson, 112 Ill. 2d 542 (1986). Furthermore, Article IX, Section 6 does not, in and of itself, grant any exemptions. Rather, it merely authorizes the General Assembly to confer tax exemptions within the limits imposed by the constitution. Locust Grove Cemetery v. Rose, 16 Ill. 2d 132 (1959). Thus, the General Assembly is not constitutionally required to exempt any property from taxation and may

place restrictions on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App. 3d 497 (1st Dist. 1983).

In accordance with its constitutional authority, the General Assembly enacted section 15-65 of the Property Tax Code which exempts property owned by “institutions of public charity,” “when actually or exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit.” 35 ILCS 200/15-65.

Ownership of the subject property by Trinity Learning Center is not at issue in this proceeding because the Department found in its August 4, 2005 determination that 57% of the building, site and parking was exempt for 100% of the 2004 assessment year, thereby determining that the subject property was, in fact, owned by an institution of public charity. The only matter at issue in this proceeding is whether the use of 43% of the subject property and parking by Trinity Day Care constituted “charitable use” during the 2004 assessment year.

Trinity Learning Center stated in its “Closing Brief” that in November, 2002, Trinity Lutheran Church transferred ownership of the subject property to Trinity Learning Center, Inc., “a non-profit corporation formed for the purpose of operating the facility, including accepting lease payments.” App. Brief, p. 2. Trinity Learning Center, the owner of the subject property, is separately incorporated from Trinity Lutheran Church. Trinity Learning Center was incorporated for purposes of owning the building on the subject property, collecting rents from the tenants and managing the facility. Trinity Learning Center has an independent Board of Directors. Tr. pp. 55, 57, 59-60, 62.

Trinity Day Care occupies 18,324 square feet (43%) of the 42,166 total square footage of the subject property owned by Trinity Learning Center. Tr. pp. 39-40; App. Ex. No. 10. The construction of the building on the subject property was funded by private contributions, a grant from the City of Rockford, a \$4 million bond issue, and a \$1.2 million loan from Trinity Lutheran Church. Total construction costs were \$5.274 million. \$2.4 million of the construction cost was attributable to the building of the childcare center on the property. Tr. pp. 24-27, 58-59; App. Ex. No. 8. It was anticipated that the tenants of the building would be LaVoz Latina, Cornucopia Food Pantry and Little People's Place, a childcare center. Little People's Place went out of business for financial reasons and never moved into the building. Tr. pp. 26-29, 61-62.

After Little People's Place went out of business, Trinity Lutheran Church's Council voted to establish a childcare program using the allocated space on the subject property. Tr. pp. 30-31. From May, 2003, through June, 2005, which covers the assessment year at issue in these proceedings, Trinity Lutheran Church operated the childcare facility as "Trinity Day Care." "Trinity Day Care, Inc." was separately incorporated on July 1, 2005, which is after the assessment year at issue in these proceedings. Tr. pp. 31-34, 55, 62-63.

I conclude that the 43% of the subject property leased to Trinity Day Care by Trinity Learning Center is "leased or otherwise used with a view to profit" by Trinity Learning Center and this use is sufficient to deny an exemption under the charitable exemption statute. 35 ILCS 200/15-65. Trinity Learning Center and Trinity Day Care entered into a lease dated June 19, 2003. Article IV of the lease required Trinity Day Care to pay rent of \$16,960/month or \$203,520/year to Trinity Learning Center. The rent

consists of two components: the build-out cost for the daycare center amortized over a 20-year period plus interest and the common area costs shared among all occupants of the facility except Cornucopia Food Pantry. “Build-out” costs are the costs used to establish the inside of the space, including doors, windows, floors, fixtures, and permanent structures. Article IV of the lease also requires that any tenant that is unable to obtain a property tax exemption shall be responsible for the property taxes, which “shall be considered to be additional rent.” Tr. pp. 36-39, 60-66; App. Ex. No. 6.

The property at issue in this case is owned and mortgaged by Trinity Learning Center and leased to Trinity Day Care. The payment by Trinity Day Care of 43% of the build-out costs of the daycare center amortized over a 20-year period plus interest and the common area costs must be considered leasing and use of the subject property by Trinity Learning Center with a “view to profit.” The anticipated profit for Trinity Learning Center is that Trinity Day Care is helping to offset mortgage and ownership costs of property owned by Trinity Learning Center, a separate corporation, thereby increasing Trinity Learning Center’s equity interest in the subject property. At the end of the 20-year period of the lease, Trinity Learning Center will have 43% of the build-out costs paid for by its tenant, Trinity Day Care, with interest, while Trinity Day Care also assumes the real estate taxes as “additional rent” on its 43% of the subject property. The evidence and testimony force me to conclude that the 43% of the subject property at issue in this case was leased and used with a view to profit by Trinity Learning Center in assessment year 2004.

Trinity Learning Center is a not-for-profit corporation. Tr. p. 9; App. Ex. No. 6. 35 ILCS 200/15-65(c) states that if a not-for-profit organization leases property that is

otherwise exempt to an organization that conducts an activity on the leased premises that would entitle the lessee to an exemption from real estate taxes if the lessee were the owner of the property, then the leased property is exempt. However, the proscription against leasing or otherwise using property with a view to profit, contained in the opening clause of 35 ILCS 200/15-65, applies to properties falling within the parameters of the subsections of the statute, including subsection (c).¹ Because I have concluded that Trinity Learning Center is leasing to Trinity Day Care with a view to profit, the 43% of the subject property at issue in this proceeding is not “otherwise exempt” as required by subsection (c) of 35 ILCS 200/15-65, and, accordingly, the childcare center does not qualify for exemption under 35 ILCS 200/15-65(c).

I am also unable to conclude that Trinity Day Care’s operation of the childcare center constitutes charitable use of the subject property. In Methodist Old People’s Home v. Korzen, 39 Ill. 2d 149 (1968) (hereinafter Korzen) the Illinois Supreme Court outlined the following “distinctive characteristics” of a charitable institution: (1) the benefits derived are for an indefinite number of persons [for their general welfare or in some way reducing the burdens on government]; (2) the organization has no capital, capital stock or shareholders; (3) funds are derived mainly from private and public charity, and the funds are held in trust for the objects and purposes expressed in the charter; (4) the charity is dispensed to all who need and apply for it, and does not provide gain or profit in a private sense to any person connected with it; (5) the organization does not appear to place obstacles of any character in the way of those who need and would

¹ See, *i.e.*, Swank v. Department of Revenue, 336 Ill. App. 3d 851 (2d Dist. 2003) which determined that the phrase “leased or otherwise used with a view to profit” contained in the opening clause of 35 ILCS 200/15-35 applied to properties falling within the parameters of the subsections of that statute.

avail themselves of the charitable benefits it dispenses; and (6) the exclusive (primary) use of the property is for charitable purposes. Korzen *supra* at 157.

The Illinois Supreme Court articulated the criteria in Methodist Old Peoples Home “to resolve the constitutional issue of charitable use.” Eden Retirement Center v. Dept. of Revenue, 213 Ill. 2d 273 (2004). Courts consider and balance the criteria by examining the facts of each case and focusing on whether and how the institution serves the public interest and lessens the State’s burden. DuPage County Board of Review v. Joint Comm’s on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461, 469 (2d Dist. 1965).

In balancing the guidelines as they relate to Trinity Day Care, I am unable to conclude that Trinity Day Care’s funds are derived mainly from public and private charity, that the funds are held in trust for the objects and purposes expressed in the charter, that Trinity Day Care’s use of the subject property lessens the State’s burden, that Trinity Day Care does not provide gain or profit in a private sense to any person connected with it, that Trinity Day Care dispenses charity to all who need it, that Trinity Day Care does not place obstacles in the way of those who would avail themselves of the benefits it dispenses or that the exclusive and primary use of the property is for charitable purposes.

Of Trinity Day Care’s “Total Income” of \$843,483 for May, 2003, through June, 2004, 76% came from payments from the State of Illinois including \$552,693 from the Department of Human Services, \$58,391 from the “Child Care Food Subsidy Program” and \$33,482 from the Department of Children and Family Services’ Protective Service Award for children in foster care and 21% (\$180,924) came from Parent Fees. Of the

“Total Income” of \$902,113 for July, 2004 through June, 2005, 81% came from the State of Illinois including \$580,852 from the Department of Human Services, \$89,928 from the “Child Care Food Subsidy Program,” \$59,811 from Protective Service Awards and 18% (\$160,948) came from Parent Fees. Tr. pp. 50-52; App. Ex. Nos. 2 and 3.

It is clear that Trinity Day Care does not derive its funds from public and private charity. In the assessment year at issue in this proceeding, 97% (as of June, 2004) and 99% (as of June, 2005) of Trinity Day Care’s funding came from payments by the State of Illinois or by parents of children enrolled, in the form of co-pays or full payment, for the childcare services Trinity Day Care provides. The payments by the State of Illinois cannot be considered “public charity.” They are, in fact, payments by the State for the childcare services rendered by Trinity Day Care. The State of Illinois is paying Trinity Day Care a fee for its services, not unlike other fee for service contracts executed pursuant to arms-length contractual agreements. Trinity Day Care is not reducing a burden on the State of Illinois because the State is paying Trinity Day Care for the childcare services it provides.

I am also unable to conclude that Trinity Day Care does not provide gain or profit in a private sense to any person connected with it or that the funds that Trinity Day Care receives are held in trust for the purposes expressed in its charter. Trinity Day Care’s largest outlay is for “Payroll Expenses,” \$631,598 for year-end June, 2004, and \$639,302 for year-end June, 2005. There was no testimony at the hearing as to how many employees are on Trinity Day Care’s payroll and their salaries. Ms. Ritter did not testify as to her salary. The only testimony remotely related to “Payroll Expense” was that employees of Trinity Day Care and Trinity Lutheran Church are charged one-half of the

regular fees for childcare, but many of the employees apply under the Child Care Assistance Program because subsidized fees are usually less expensive Tr. pp. 89-90. There was no testimony as to how many employees are charged one-half of the regular fees, the costs to Trinity Day Care of reducing the childcare fees for employees and how this reduction in fees is accounted for in the financial statements. Accordingly, there was insufficient evidence and testimony at the hearing for me to conclude that Trinity Day Care does not provide gain or profit in a private sense to persons connected with it.

After “Payroll Expenses,” Trinity Day Care’s next largest outlay is its lease payment of \$16,960/month or \$203,523/year, paid to Trinity Learning Center, a separate corporation. As discussed previously, this lease payment reimburses Trinity Learning Center for the cost of construction of the childcare center with interest, while Trinity Day Care also assumes its share of the real estate taxes on the property. There was no testimony at the hearing, and the lease itself does not indicate, that Trinity Day Care acquires any incidences of ownership in the subject property for their substantial lease payment. The \$203,523 yearly lease payment that Trinity Day Care makes to Trinity Learning Center increases Trinity Learning Center’s equity in the property and reimburses Trinity Learning Center for its costs of construction but this amount is not being used for any “charitable” purposes of Trinity Day Care.

Furthermore, with 97% to 99% of its revenue coming from payment for its childcare services either by the State of Illinois or by the parents of children enrolled, I must conclude that the primary use of the property is not charitable, as 35 ILCS 200/15-65 requires. The primary use of the 43% of the subject property and parking at issue in these proceedings is the exchange of childcare services for payment. This payment is

made either by the State, co-pays from the parents whose children are subsidized by the State or by parents who pay the full fare. The revenue figures clearly indicate that Trinity Day Care is operating a childcare business, not a childcare charity, on its portion of the subject property. Counsel for Trinity Day Care referred to Ms. Ritter as Trinity Day Care's "Director of Parent Relations and Marketing." Tr. p. 82. I am unaware of any charity that needs to "market" its services, and the term "marketing" is usually and appropriately associated with a business.

Ms. Ritter testified that the State subsidy and the parents' co-pay has "always been less than the full fee amount charged to parents who do not receive State subsidies." According to Ms. Ritter, Trinity Day Care does not charge parents the difference between the State subsidies and the full fee amount, although other childcare centers do charge this difference. "People often come to us because they can't afford the difference in fees they had to pay at other places, subsidized parents." Tr. pp. 100-101. Trinity Day Care's argument here appears to be that the uncollected difference between the full fee amount and the subsidized amount plus the parent's co-pay, constitutes "charity."

Similar arguments have been made by hospitals with regard to the unreimbursed and uncollected costs of Medicaid and Medicare payments. Illinois courts have consistently rejected the argument that unreimbursed and uncollected costs of Medicare and Medicaid constitute charitable care. For example, in Riverside Medical Center v. Dept. of Revenue, 342 Ill. App. 3d 603 (3d Dist. 2003), Riverside argued in a manner similar to Trinity Day Care, that the Medical Center's charity care included "discounted care to patients through Medicare, Medicaid and private insurance." The court stated that it was unpersuaded by Riverside's arguments that the unreimbursed amounts constituted

charitable care. The court was “confident that these discounts are not charitable and do not warrant a finding in favor of Riverside.” *Id.* at 610.

Trinity Day Care’s arguments that the unreimbursed and uncollected costs of its childcare program constitute charity are similarly “unpersuasive.” Ms. Ritter testified that since the childcare center began operating, approximately 20% of the enrolled children pay the full fee and 80% have their fees subsidized by the State. Tr. pp. 99-100. These figures indicate that Trinity Day Care has made a business decision to appeal to a market that receives State subsidized childcare. It may be that the appeal to this market guarantees full enrollment in the childcare center. Trinity Day Care’s capacity is limited to 214 children and there are currently 209 children enrolled. Tr. pp. 88-89. It may also be that the State subsidized childcare market is the only market that Trinity Day Care can appeal to in its community. But the unreimbursed costs of its childcare services, the amount that Trinity Day Care chooses not to collect or is unable to collect, does not constitute charity.

The applicant argues in its “Reply Brief” that Trinity Day Care is “not required to accept children who are state subsidized, but chooses to do so in its endeavor to assist low income families in the Rockford area.” “In doing so, and not charging parents any amount above the state subsidized amount, the Applicant is foregoing any chance to make a profit in its operation of the Day Care.” Reply Brief, p. 4. Trinity Day Care did not argue that it is providing childcare below cost and its argument that it is foregoing any chance to make a profit is not borne out by the financial data. Trinity Day Care had net losses in June, 2004, of \$210,608 and June, 2005, of \$172,647. These losses are, of course, calculated after deduction of Trinity Day Care’s substantial lease payment to

Trinity Learning Center, a separate corporation, of \$203,523 in each of the two years. As stated previously, the lease payment is Trinity Day Care's largest outlay after "Payroll Expenses." App. Ex. No. 2 and 3. Without the lease payment, Trinity Day Care would have earned a profit of approximately \$31,000 for year-end June, 2005. There was no testimony at the hearing as to what other childcare centers pay for rent, leasing or ownership of their property. It is not unreasonable to conclude that Trinity Day Care is "forgoing any chance to make a profit" because it is subsidizing a separate corporate entity, Trinity Learning Center, in its purchase of the subject property.

Trinity Day Care's Parent Handbook lists its full fee rates as follows: Children 6 weeks to 2 years; \$37.25 daily/\$186.25 weekly; 3 years to 5 years; \$25.00 daily/\$125 weekly; School age; \$12.50 daily/\$62.50 weekly; Vacation/Summer: \$25.00 daily/\$125.00 weekly. The Parent Handbook states that all parents are required to pay on a weekly/monthly basis. "This fee must be paid in advance of service." "All weekly/monthly fees MUST be paid on time." "Full payment is required regardless of attendance with the exception of vacation (1 week per child per year) or holidays." "Parents of newly enrolled students are required to pay the first two weeks of fees upon enrollment." "If fee payments are not kept current, we will terminate day care services and take further action to collect payment." App. Ex. No. 16.

"A \$25 fee will be charged for any returned check." "A late charge fee of \$15.00 is assessed for every part of 15 minutes you are late picking up your child." "Late fees MUST be paid prior to child's next day of attendance." Trinity Day Care "reserves the right to release your child from our care" for (*inter alia*) "failure to stay current on all fees." App. Ex. No. 16. I concluded previously in this Recommendation for

Disposition that Trinity Day Care was operating a childcare business, not a childcare charity, on its portion of the subject property. The above provisions contained in the Parent Handbook are indicative of a business, not a charity. There may be sound business reasons for Trinity Day Care to publish its “full fee rates” and to have such detailed payment and collection policies. However, publishing these rates and the policies used to collect these rates is “lacking in the warmth and spontaneity indicative of a charitable impulse” and appears to be “related to the bargaining of the commercial market place.” Korzen *supra* at 158.

Moreover, the policies as published in the Parent Handbook conflict with the testimony of Ms. Ritter. The Parent Handbook states that parents of newly enrolled students are required to pay the first two weeks of fees upon enrollment. Ms. Ritter testified that this requirement is “frequently” waived. Tr. pp. 90-91. The Parent Handbook makes no mention of a “waiver.” The Parent Handbook states that if fee payments are not kept current, Trinity Day Care will terminate childcare services and take further action to collect payment. Ms. Ritter testified that if a parent cannot afford to pay, Trinity Day Care will work out “some kind of payment plan with them, reduce their fees, whatever we can do to make some type of agreement with them so it’s affordable for them.” Tr. p. 91. The Parent Handbook makes no mention of a fee reduction, “payment plan” or “agreement.” The Parent Handbook states that Trinity Day Care will “take further action to collect payment” if fee payments are not kept current. Ms. Ritter testified that if fees are unpaid, Trinity sends letters, makes phone calls and after six months, writes-off the debt. Tr. pp. 94-95.

The applicant's argued in its "Reply Brief" that "as the hearing testimony illustrates, the actual practice of the Applicant is not what is stated in the Parent Handbook." "The undisputed testimony from the hearing is that the Applicant estimates co-payment amounts prior to state assistance determinations in order to assist parents in obtaining their services, the Applicant does not charge a registration fee, the Applicant has often waived the two week advance payment requirement, the Applicant has not and likely will not institute formal collection procedures, and the Applicant does not charge above the State assistance amount, although the Applicant could." Reply Brief, p. 4. Trinity Learning Center argued further that since the Department did not dispute the testimony, "no further evidence is needed as to the actual practices of the Day Care as the Applicant presented sufficient undisputed testimony." ² Reply Brief, pp. 4-5.

The oral testimony of the applicant's witnesses is not "undisputed." The oral testimony is disputed and contradicted by Trinity Day Care's own Parent Handbook. In effect, Trinity Learning Center is asking that I give more weight to the oral testimony offered by its witnesses than to the documentary evidence. It is well established in Illinois that a statute exempting property from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation. Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430 (1st Dist. 1987). Based on these rules of construction, Illinois courts have placed the burden of proof upon the party seeking exemption, and have required such party to prove, by clear and

² It is unclear why the applicant reaches the conclusion that the testimony is "undisputed." The Department cross-examined the Applicant's witnesses with regard to conflicts between the oral testimony and the Parent Handbook although the Department did not call witnesses of its own. In addition, it must be noted that Ms. Ritter did not begin working for Trinity Day Care until September, 2005, which is after the 2004 assessment year at issue in this proceeding. No witness who worked for Trinity Day Care during the 2004 assessment year testified as to the "actual practices" of Trinity Day Care during that period.

convincing evidence, that it falls within the appropriate statutory exemption. Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App. 3d 678 (4th Dist. 1994).

When oral testimony conflicts with documentary evidence on significant issues, I must conclude that the evidence does not rise to the standard of “clear and convincing” necessary for proving exemption under the Property Tax Code and that the applicant has not borne their burden of proof in showing that they are entitled to exemption. The conflicts between the testimony at the hearing regarding Trinity Day Care’s “actual practices” and the payment provisions as contained in the Parent Handbook are significant. If Ms. Ritter’s testimony regarding “actual practices” is correct, I must question why the practices are not published in the Parent Handbook. How would a parent with children enrolled in Trinity Day Care who can no longer afford the fees know that Trinity Day Care will reduce their fees and work out a “payment plan” to make the fees “affordable”? The availability of a reduction in fees or a payment plan is not discussed in the Parent Handbook. How would a parent interested in enrolling a child know that Trinity Day Care “frequently” waives the requirement in the Parent Handbook that the first two week of fees must be paid upon enrollment? This “waiver” is not discussed in the Parent Handbook.

In Highland Park Hospital v. Dept. of Revenue, 155 Ill. App. 3d 272, 281 (2d Dist. 1987), the court found that the Hospital’s Immediate Care Center did not qualify for a charitable exemption because, *inter alia*, the advertisements for the facility did not disclose its charitable nature. The court stated that “the fact is that the general public and those who ultimately do not pay for medical services are never made aware that free care

may be available to those who need it.” In Alivio Medical Ctr. v. Department of Revenue, 299 Ill. App. 3d 647, 652 (1st Dist. 1998), where the court denied a charitable exemption for a medical care facility, the court again noted that “Alivio does not advertise in any of its brochures that it provides charity care, nor does it post signs stating that it provides such care.”

Because there was no evidence that Trinity Day Care’s “actual practices” are advertised, I am unable to conclude that Trinity Day Care dispenses charity to all who need it. Without documentary evidence to show that those needing charity would know that it is available at Trinity Day Care, I must conclude that Trinity Day Care places obstacles in the way of those who need and would avail themselves of the benefits it dispenses. The applicant in this case has failed to prove, by clear and convincing evidence, that Trinity Day Care’s use of 43% of the subject property falls within the statutory requirements of 35 ILCS 200/15-65.

WHEREFORE, for the reasons stated above, I recommend that the Department’s determination which denied an exemption to 43% of the building, site and parking on the subject property used by Trinity Day Care on the grounds that it was not in exempt use should be affirmed and that the 43% of the building, site and parking, located on Winnebago County P.I.N.S 11-23-452-001, 11-23-452-002 through 11-23-452-005, 11-23-385-003 through 11-23-385-005 should not be exempt from 2004 real estate taxes.

March 5, 2007

Kenneth J. Galvin
Administrative Law Judge