

**PT 08-8**

**Tax Type: Property Tax**

**Issue: Charitable Ownership/Use**

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

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**WINNETKA WOMAN'S CLUB,**

**APPLICANT**

**v.**

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

**No: 06-PT-0079**

**Real Estate Tax Exemption  
For 2005 Tax Year**

**P.I.N. 05-21-116-001**

**Cook County Parcel**

**Kenneth J. Galvin  
Administrative Law Judge**

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**RECOMMENDATION FOR DISPOSITION**

**APPEARANCES:** Mr. James T. Murray, on behalf of the Winnetka Woman's Club; 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 Cook County Parcel, identified by property index number 05-21-116-001 (hereinafter the "subject property") qualifies for exemption from 2005 real estate taxes under 35 ILCS 200/15-65 of the Property Tax Code, which exempts all property owned by an institution of public charity that is actually and exclusively used for charitable purposes, and not leased or otherwise used with a view to profit.

This controversy arose as follows: On May 25, 2006, the Winnetka Woman's Club (hereinafter "Winnetka" or "applicant") filed an Application for Non-homestead

Property Tax Exemption with the Cook County Board of Review (the “Board”) seeking exemption from 2005 real estate taxes for the subject property. On August 3, 2006, The Department of Revenue of the State of Illinois (the “Department”) denied Winnetka’s exemption request finding that the subject property was not in exempt ownership and not in exempt use in 2005. Winnetka protested the Department’s exemption denial. On December 10, 2007, an evidentiary hearing was held with Ms. Marsha Rodes, Executive Secretary of Winnetka, Ms. Juliann Janovicz, in charge of Adult Services for the Winnetka Public Library District, Ms. Trudy Havens, Secretary and Past-President of Winnetka, and Ms. Mary Sutherland, Treasurer and Past-President of Winnetka, testifying. Following a careful review of the testimony and evidence, it is recommended that the Department’s denial be affirmed.

**FINDINGS OF FACT:**

1. Dept. Ex. No. 1 establishes the Department’s jurisdiction over this matter and its position that the subject property was not in exempt ownership or use during 2005. Tr. pp. 12-13; Dept. Ex. No. 1.
2. Winnetka was first incorporated in Illinois in 1910. In 1946, Winnetka was incorporated under the Illinois “General Not For Profit Corporation Act.” Tr. pp. 17-18; App. Ex. Nos. 1 and 2.
3. Winnetka acquired title to the subject property in 1911. Tr. pp. 23-24; App. Ex. No. 9.
4. Winnetka is exempt from income tax under Section 501(c)(3) of the Internal Revenue Code. Tr. p. 19; App. Ex. No. 4.

5. The building on the subject property contains a multi-purpose room and babysitting room in the lower level, a lounge, ballroom, and kitchen on the upper level, and a living room, bedroom, storage, and balcony in the third floor caretaker's apartment. Tr. pp. 22-23, 130-135; App. Ex. Nos. 6, 7 and 8.
6. Winnetka's Bylaws list three classes of membership: Active, Associate and Emeritus. Active members carry on the work of the Club and pay dues. Associate membership may be conferred on former active members in good standing, who because of change of residence, employment or illness, are unable to make full use of the Club. Emeritus membership may be conferred upon any member of the Club who has paid annual dues for active membership for 35 years. Dues for emeritus members are \$55. Tr. pp. 18-19, 41; App. Ex. No. 3.
7. The Bylaws require that a candidate for admission to the Club be proposed by the Membership Chairman. Applications for membership are presented by the Membership Chair to the Board of Directors. The Bylaws require that at its next regular meeting, the Board of Directors shall "consider such applications and vote upon their admission." The Bylaws state that "[A] newly elected member shall not be enrolled as a member until dues for the current year have been paid." "If dues are not paid by July 31, membership shall be forfeited." To reinstate membership after forfeiture, a member must be recommended by the Membership Committee, elected by the Board of Directors and pay dues. There is no provision in the Bylaws for waiver of dues. Tr. pp. 18-19; App. Ex. No. 3.
8. Winnetka uses a brochure to solicit membership. The brochure states that "Members enjoy the opportunity to provide philanthropy within the framework

of friendship.” “The Club is multigenerational with a high percentage of members with young children. It provides a network of civic engagement and involvement important to the vitality of our community as a whole.” The brochure states that “[P]roceeds of fundraising work stay in the immediate community.” Tr. p. 20; App. Ex. No. 5.

9. According to the brochure, membership “opens doors to” “monthly luncheons with timely, informative programs (babysitting provided at nominal cost),” speakers and events, “Fashion Show Breakfast (an extravaganza sponsored by Saks Fifth Avenue),” monthly book discussion club, “health and fitness series focusing on Women’s and Family Issues,” “Rental of Ground Floor of Clubhouse for \$25 for 2 hours (great for birthday parties),” “discounts” to Christie’s on the Village Green, Club’s Housewalk, Antique Show Preview Picnic and Newsletter. The “Membership Application,” included in the brochure, states that yearly dues are \$110. The brochure does not advertise that dues may be waived. Tr. pp. 20, 102; App. Ex. No. 5.
10. Winnetka also solicits new members by advertising, word-of-mouth, an announcement in the Winnetka Chamber of Commerce Handbook, and by sending information to new residents. Advertisements and solicitations do not state that dues may be waived. Tr. pp. 61, 101, 103.
11. Winnetka has approximately 240 members. Approximately 20 members are from the Village of Winnetka. There are no male members. In 2005, one member of Winnetka could not pay dues because of financial hardship. Tr. pp. 40-41, 55-56, 94-95, 103.

12. Winnetka's audited "Financial Statements" for May 31, 2005 show total revenue of \$258,837, of which 74% is from "Club Activities (Member Programs and Fund Raising)" and "Dues," 12% is from "Rental Income," and 7% is from "Contributions." "Net Assets at the End of the Year" were \$125,170. Winnetka's audited "Financial Statements" for May 31, 2006 show total revenue of \$255,061, of which 80% is from "Club Activities (Member Programs and Fund Raising)" and "Dues," 14% is from "Rental Income," and "Contributions" are less than 1%. "Net Assets at the End of the Year" were \$128,977. Tr. pp. 29-32; App. Ex. Nos. 14 and 15.
13. In 2005, Winnetka allowed the following organizations to use their facilities without paying a rental fee: Breast Cancer Walk, Winnetka Youth Organization, Winnetka Northfield Public Library District (twice, with attendance of 200 people), Village Club Moms & Tots and Winnetka Library. Tr. pp. 32-35, 62, 78, 80; App. Ex. No. 11.
14. In 2005, Winnetka allowed the following organizations to use their facilities at a reduced rental fee: One to One Learning Center, Greeley PTA, Elkin School of Music, Josselyn Center (for Mental Health), New Trier Democrats (twice), Cub Scouts, Family Service of the North Shore, Haven Youth and Family Services, Winnetka Associates of the Art Institute, Washburne School, New Trier School Physical Education Department (for rowing practice, 2 hours, six days/week, September through May), Winnetka Community Nursing School, North Shore Country Day School, Hadley School, Winnetka Public School Nursery, Art Institute, Skokie School Foundation, Indiana University, League of Women

Voters and Evanston Northwestern. These organizations paid a total rental of \$11,050. Tr. pp. 32-35, 71-72, 96, 112-113; App. Ex. No. 11.

15. In addition to the above rentals, Winnetka rented to “Weight Watchers,” for \$4,420, four “single use” Winnetka members for a total of \$2,790, and fourteen “single use” nonmembers for a total of \$14,575. Winnetka members rent at a lower rate than nonmembers. Tr. pp. 34-35, 98, 139-140; App. Ex. No. 12.
16. Winnetka offers “Gertrude Nielsen and Kitty Shen Scholarships” to graduating high school students in the New Trier Township District, which includes parts of the villages of Glencoe, Winnetka, Wilmette, Northfield, Kenilworth and Glenview. Information on the scholarships is conveyed to high school guidance counselors in the Township District, advertised in the Pioneer Press, in Winnetka’s newsletter, and on Winnetka’s website. Fourteen applications were received and four scholarships were awarded. Names and addresses of the applicants are blacked out on the applications. An assessment of the applications is made after considering scholarship and citizenship of the student and financial need including the Federal-1040 of the applicant’s parents. Tr. pp. 43-47, 50-51, 89, 116; App. Ex. No. 13.
17. Winnetka has two part-time paid employees who perform maintenance and office work. Tr. p. 47.
18. Winnetka offers luncheon lectures and programs. There is a charge for attendance with members paying \$5 less than nonmembers. Winnetka’s “Housewalk” is open to members and nonmembers with members paying \$50 and nonmembers paying \$55. Tr. pp. 56-57, 64-65, 72, 139-140.

## CONCLUSIONS OF LAW:

An examination of the record establishes that Winnetka has not demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exempting the subject property from 2005 real estate taxes. Accordingly, under the reasoning given below, the determination by the Department that the subject property does not satisfy the requirements for exemption set forth in 35 ILCS 200/15-65 should be affirmed. In support thereof, I make the following conclusions:

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

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

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

Pursuant to its constitutional mandate, the General Assembly enacted the Property Tax Code (35 ILCS 200/1-3 *et seq.*). The provisions of the Code that govern the

disposition of this case are found in Section 15-65. In relevant part, the provision states as follows:

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

(a) institutions of public charity

35 ILCS 200/15-65. Illinois courts have consistently refused to grant relief under Section 15-65 of the Property Tax Code, absent appropriate evidence that the subject property is owned by an entity that qualifies as an “institution of public charity,” that the property is “exclusively used” for purposes that qualify as “charitable” within the meaning of Illinois law and that the property is not leased or otherwise used with a view to profit. 35 ILCS 200/15-65.

In Methodist Old People’s Home v. Korzen, 39 Ill. 2d 149, 157 (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 avail themselves of the charitable benefits it dispenses; and (6) the exclusive (primary) use of the property is for charitable purposes.

The Illinois Supreme Court articulated the criteria in Korzen “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 Com'n on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461, 469 (2d Dist. 1965). Winnetka's ownership of the subject property was established by a deed evidencing that Winnetka acquired title to the subject property on June 19, 1911. App. Ex. No. 9. Thus, the question becomes whether Winnetka qualifies as "an institution of public charity" under the terms of Korzen, whether the subject property is used exclusively for charitable purposes and whether the subject property is leased or otherwise used with a view to profit.

I am unable to conclude, based on the evidence and testimony presented at the evidentiary hearing, that Winnetka qualifies as an "institution of public charity." Winnetka's Articles of Incorporation, dated July 11, 1946, state that Winnetka Woman's Club was "formed" to "promote the social and intellectual life of the Club membership and to serve the best interests of the community in which said Club is located." App. Ex. No. 1. According to Winnetka's Bylaws, its "Object," "shall be to serve the interests of the community through philanthropy and volunteer service and to promote the cultural and intellectual life of its members." App. Ex. No. 3. The brochure that Winnetka uses to solicit membership states that "[M]embers enjoy the opportunity to provide philanthropy within the framework of friendship." "The Club is multigenerational with a high percentage of members with young children. It provides a network of civic engagement and involvement important to the vitality of our community as a whole." Tr. p. 20; App. Ex. No. 5

Assuming, *arguendo*, that promoting the social and intellectual life of Winnetka's members, serving the best interests of the community, and providing philanthropy within the framework of friendship are charitable purposes, these purposes must be assessed in terms of Korzen. Three of the factors from Korzen to be considered are whether the benefits derived from Winnetka are for an indefinite number of persons, whether Winnetka's "charity" is dispensed to all who need and apply for it and whether Winnetka places obstacles in the way of those who need and would avail themselves of the charitable benefits.

Based on the testimony and evidence, I must conclude that the benefits derived from Winnetka are not for an indefinite number of persons. Winnetka is admittedly a membership organization. Winnetka exists because of the mutual interests of its members and the benefits of Winnetka flow to its limited membership. If promotion of social and intellectual life for Club membership, and affording members the "opportunity to provide philanthropy within the framework of friendship" are charitable endeavors, they are endeavors that are available not to an indefinite number of persons, but to Winnetka's paying members. There was testimony that Winnetka has 240 members and approximately 20 members are from the Village of Winnetka. There are no male members. Tr. pp. 40-41, 94-95, 103.

Winnetka's Bylaws list three classes of membership: Active, Associate and Emeritus. Active members carry on the work of the Club and pay dues. Associate membership may be conferred on former active members in good standing, who because of change of residence, employment or illness, are unable to make full use of the Club. Emeritus membership may be conferred upon any member of the Club who has paid

annual dues for active membership for 35 years. All members pay dues with emeritus members paying a lesser amount, \$55. Tr. pp. 18-19, 41; App. Ex. No. 3.

The Bylaws require that a candidate for admission to the Club be proposed by the Membership Chairman. Applications for membership are presented by the Membership Chair to the Board of Directors. The Board of Directors “considers” and “votes” upon admission. The Bylaws state that “[A] newly elected member shall not be enrolled as a member until dues for the current year have been paid.” “If dues are not paid by July 31, membership shall be forfeited.” To reinstate membership after forfeiture, a member must be recommended by the Membership Committee, elected by the Board of Directors and pay their dues. No provision in Winnetka’s Bylaws requires the organization to waive dues for entering or existing members. Tr. pp. 18-19; App. Ex. No. 3.

Winnetka solicits new members by advertising, word-of-mouth, an announcement in the Winnetka Chamber of Commerce Handbook, by sending information to new residents and by a brochure. Tr. pp. 61, 101, 103. According to the brochure, membership “opens doors to” “monthly luncheons with timely, informative programs (babysitting provided at nominal cost),” speakers and events, “Fashion Show Breakfast (an extravaganza sponsored by Saks Fifth Avenue),” “monthly book discussion club,” “health and fitness series focusing on Women’s and Family Issues,” “Rental of Ground Floor of Clubhouse for \$25 for 2 hours (great for birthday parties),” “discounts” to Christie’s on the Village Green, Club’s Housewalk, Antique Show Preview Picnic and Newsletter. The brochure states that yearly dues are \$110. The brochure has a “Membership Application” which contains a space for the new member to list who they were “Referred By.” There is no mention in the brochure that dues may be waived because of financial need. Tr. pp. 20, 102; App. Ex. No. 5.

Winnetka's Bylaws and its brochure advertising membership clearly evidence that the benefits of Winnetka flow to a select group of members. The brochure states that "membership opens doors to" many different activities. However, these doors are shut to an indefinite number of persons, nonmembers, and to members who fail to pay their dues. If the primary benefit of an organization flows to its members and not the public, then an exemption will be denied. Board of Certified Safety Professionals v. Johnson, 112 Ill. 2d 542 (1986) Fraternal and social organizations do not qualify for exempt status because they operate primarily for the benefit of a limited class of persons who maintain membership therein.<sup>1</sup> The endeavors that Winnetka claims are charitable do not flow to the public. These endeavors are enjoyed primarily by Winnetka's membership, which pays either \$110/year or \$55/year to participate.

In Rogers Park Post No. 108 v. Brenza, 8 Ill. 2d 286 (1956), the Court found that the primary purpose of the organization was to foster respect for our civil institutions and to benefit and afford comradeship to its members. *Id.* at 291. It must be noted that these purposes are strikingly similar to the statement in Winnetka's Bylaws that the "Object" of Winnetka is to "serve the interests of the community through philanthropy and volunteer service," and the statement in Winnetka's brochure that "members enjoy the opportunity to provide philanthropy within the framework of friendship." According to the Court in Rogers Park, the organization's purposes were "patriotic, laudable and public spirited." "Nonetheless, they do not constitute charitable purposes, however desirable or however

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<sup>1</sup> The Retailers' Occupation Tax Act (35 ILCS 120 *et seq.*) allows an exemption from retailers' occupation tax for personal property sold to a society, association, foundation or institution organized and operated "exclusively" for charitable purposes. 35 ILCS 120/2-5(11). 86 Ill. Adm. Code § 130.2005(e)(1) entitled "Nonprofit, Social, Recreational and Athletic Organizations" states that if a purchaser is incorporated or otherwise organized primarily to provide entertainment, social, recreational or athletic activities to its members, the purchaser is not organized and operated exclusively for charitable purposes. "Such a purchaser is not organized and operated exclusively for charitable purposes even though it does some charitable work." "This is true even though such purchaser is organized and operated as a not-for-profit corporation, association, etc."

beneficial.” The Court found that the dominant use of the subject property was as a “private club rather than as a headquarters for the dispensation of charitable relief.” *Id.* at 290-291. Similarly, Winnetka’s primary use of the subject property is as a private club for its members, but not as a headquarters for the dispensation of charitable relief.

In Albion Ruritan Club v. Dep’t. of Revenue, 209 Ill. App. 3d 914 (5<sup>th</sup> Dist. 1991), the court found that a community service organization’s property did not warrant a tax exemption. Albion’s constitution listed its objectives, *inter alia*, as “[T]o promote fellowship and good will among its members and the citizens in the community, and to inspire each other to higher efforts.” In denying a property tax exemption to Albion, the court noted that it must be shown that the benefits accrue to mankind directly. *Id.* at 918. It is not reasonable to conclude that Winnetka’s benefits accrue to mankind directly or that Winnetka’s benefits are for an indefinite number of persons, when participation in Winnetka’s endeavors is primarily enjoyed by its paying members.

There was testimony at the hearing that because Winnetka has been recognized as a Section 501(c)(3) organization under the Internal Revenue Code, “it has no barriers to entry for anyone into the Club.” Tr. p. 101. This testimony is at odds with the Bylaws, which require that members be “proposed,” by the Membership Chairman, “presented” by the Membership Chair to the Board of Directors and “considered” and “voted upon” by the Board of Directors. App. Ex. No. 3. Winnetka’s brochure advertising membership contains a “Membership Application” that has a line for “Referred By,” to be filled in by a prospective member. These factors force me to conclude that Winnetka is selective about its membership.

There was no testimony at the hearing as to what criteria the Membership Chairman considers before proposing a new member or what criteria the Membership Chairman considers before presenting a new member to the Board. There was no testimony as to what criteria the Board of Directors “considers” before “voting upon” admission. There was no testimony at the hearing as to whether a new member must be “referred by” someone before joining Winnetka. There was no testimony as to why Winnetka’s Bylaws have these restrictions on membership if there are “no barriers for entry for anyone into the Club.” It is reasonable to question why a member must be proposed, presented, considered and voted upon if all prospective members who apply are admitted. Because of the restrictions in the Bylaws, I am unable to conclude that Winnetka’s “charitable endeavors” are dispensed to all who need and apply for them.

The one criterion for membership in Winnetka that the Bylaws are explicit about is that a newly elected member shall not be enrolled until dues for the current year are paid. The Bylaws state explicitly that “[A] newly elected member shall not be enrolled as a member until dues for the current year have been paid.” The Bylaws contain the same requirement for existing members. “If dues are not paid by July 31, membership shall be forfeited.” To be reinstated after forfeiture, a member must be recommended by the Membership Committee, elected by the Board of Directors and pay their dues. There is no provision in the Bylaws for waiver of dues. App. Ex. No. 3. Winnetka’s brochure advertising membership does not state that dues may be waived if a new member cannot afford them. Ms. Rodes testified that Winnetka also solicits new members by advertising, word-of-mouth, announcements in the Winnetka Chamber of Commerce Handbook, and by sending new Winnetka residents a letter. Tr. pp. 61, 101, 103. She was then asked “[D]oes your advertising or your solicitation of new members indicate

that if you can't afford dues, you can still become a member?" She responded: "No." Tr. p. 61.

Ms. Sutherland was asked if she was "familiar with a policy relative to an applicant who might be incapable of providing the annual membership fee." She replied that "[I]f a person feels that there are circumstances that they cannot pay the hundred and ten dollars, they can apply to the office and in confidence they will be admitted." Tr. pp 103-104. She was then asked how a member or prospective member would become aware of the "policy." "Well, word of mouth, for sure." Tr. p. 104. Ms. Rodes testified that "just one" member of Winnetka could not pay dues in 2005. Tr. pp. 55-56. It was never explained at the evidentiary hearing where the "policy" granting membership to applicants that cannot afford the dues was stated or written. No documentary evidence was admitted showing that Winnetka had such a policy.

Ms. Sutherland acknowledged that there were persons living in Winnetka "that may be in need of a subsidy or waiver of fees." "They have not come to my attention, but I know they have come through [Winnetka's] office." Tr. pp. 105-106. Ms. Sutherland also acknowledged that there were people who desired to attend Winnetka's Antique Show "but cannot afford the opportunity." She was asked how those persons [are] "identified to the club, or made aware?" She replied: "I think you have to assume that people who want to do this have to take some kind of initiative, and so they have to contact us. We do not go out and say, if you can't pay, you know, come here." Tr. pp. 108-109.

It is simply impossible to conclude from the testimony and evidence at the hearing that any person wanting to join Winnetka but financially unable to pay the dues or wanting to remain a member of Winnetka but financially unable to continue to pay

dues would know that charitable assistance is available. The Bylaws are silent as to charitable assistance. The brochure advertising membership is silent as to charitable assistance. Other means that Winnetka uses for soliciting membership are silent as to charitable assistance. No policy providing for charitable assistance was admitted into evidence. According to the testimony, prospective members are made aware of the policy by “word of mouth.” It is unclear who is providing the “word of mouth” when only one Winnetka member has come forward because of financial hardship.

In Highland Park Hospital v. Department of Revenue, 155 Ill. App. 3d 272 (2d Dist. 1987), the court found that an Immediate Care Center did not qualify for a charitable exemption because, *inter alia*, the advertisements for the facility did not disclose its charitable nature. The court stated that “the fact is that the general public and those who ultimately do not pay for medical services are never made aware that free care may be available to those who need it.” *Id.* at 281. In Alivio Medical Ctr. v. Department of Revenue, 299 Ill. App. 3d 647 (1<sup>st</sup> 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.” *Id.* at 652. These cases are in direct conflict with the testimony at the hearing that Winnetka does not advertise that charitable assistance is available because people needing assistance must “take some kind of initiative.” Tr. pp. 108-109. In order to remove obstacles in the way of those needing charitable assistance, Highland Park and Alvio would require that an organization advertise that charitable assistance is available.

A person who wishes to join Winnetka, but is unable to afford it, would never know from the brochures, advertisements or Bylaws that charitable assistance is

available. There was testimony that only one person could not pay dues to Winnetka in 2005 because of financial hardship. Tr. pp. 55-56. The fact that only one person requested assistance is quite likely an indication that the availability of charitable assistance is not being advertised to the general public. A prospective member who wanted to “serve the interests of the community through philanthropy and volunteer service” or who wanted to “enjoy the opportunity to provide philanthropy within the framework of friendship” would understand from Winnetka’s advertisements and Bylaws that, without exception, they had to pay \$110 or \$55 to partake in Winnetka’s activities. The lack of advertising that charitable assistance is available, if in fact it is available, is a significant obstacle in the way of anyone who would avail themselves of Winnetka’s “charitable” benefits.

Another distinguishing characteristic of a charitable organization is that the organization’s funds are derived mainly from public and private charity, and that the funds are held in trust for the objects and purposes expressed in the charter. Winnetka’s audited “Financial Statements” for May 31, 2005 show total revenue of \$258,837, of which 74% is from “Club Activities” including “Member Programs and Fund Raising” and “Dues,” 12% is from “Rental Income,” and 7% is from “Contributions.” “Net Assets at the End of the Year” were \$125,170. Winnetka’s audited “Financial Statements” for May 31, 2006 show total revenue of \$255,061, of which 80% is from “Club Activities” including “Member Programs and Fund Raising” and “Dues,” 14% is from “Rental Income.” “Contributions” are less than 1%. “Net Assets at the End of the Year” were \$128,977. Tr. pp. 29-32; App. Ex. Nos. 14 and 15.

“Club Activities” were responsible for 74% of Winnetka’s total revenue at May 31, 2005 and 80% of Winnetka’s total revenue at May 31, 2006. “Club Activities”

included income from Winnetka's Housewalk, Antique Show, Fashion Show and membership dues. This revenue generated from "Club Activities" cannot be considered a "contribution" from public and private charity. Winnetka requires that members pay dues in order to participate in the Club's activities. Members then pay an additional charge to participate in the Housewalk, Antique Show and Fashion Show. Nonmembers pay a slightly higher fee to participate in these activities.<sup>2</sup> Tr. pp. 139-140. The majority of Winnetka's funding, 74% to 80%, comes from the annual dues of its members, and fees paid by members and nonmembers to participate in the activities offered by Winnetka. Where most of an organization's support is derived from membership dues and participation fees, its funds are not derived from public and private charity.

The only identifiable "contributions" from Winnetka's financial statements were \$18,815 (7% of total revenue) as of May 31, 2005, and \$883 (less than 1% of total revenue) as of May 31, 2006. App. Ex. Nos. 14 and 15. Winnetka's Form 990, "Return of Organization Exempt from Income Tax" for 2005 shows "Contributions: Direct Public Support" as \$9,515, equal to 8% of Winnetka's total revenue as reported on the Form 990. Dept. Ex. No. 2. It is evident that Winnetka is clearly not deriving the majority of its funding from public and private charity and the organization does not possess this characteristic of a charitable organization.

The charitable exemption statute requires that for property to be exempt for charitable purposes, it must not be "leased or otherwise used with a view to profit." 35 ILCS 200/15-65. The evidence admitted at the hearing show that Winnetka leases its facilities with a view toward profit. Winnetka's "Financial Statements" for May 31, 2005

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<sup>2</sup> Ms. Sutherland testified that there is no discount for members attending the Antique Show. Tr. p. 139. The brochure used to solicit membership states that membership "opens doors to" a discount for the "Antique Show Preview Picnic." App. Ex. No. 5.

show that 12% of its total revenue, \$32,300, is from “Rental Income.” App. Ex. No. 14. For May 31, 2006, 14% of Winnetka’s total revenue, \$34,910, is from “Rental Income.” In 2005, Winnetka rented to “Weight Watchers,” on a monthly basis for a total of \$4,420. Winnetka rented to four “single use” Winnetka members for a total of \$2,790, and fourteen “single use” nonmembers for a total of \$14,575. Tr. pp. 34-35, 98, 139-140; App. Ex. No. 12. Also in 2005, Winnetka rented its facilities to “Civic and Charitable” organizations for \$11,050. App. Ex. Nos. 11 and 12. With Winnetka having an excess of revenue over expenses of \$17,873 at May 31, 2005 (and an accumulated surplus of \$125,170) and an excess of revenue over expenses of \$3,807 at May 31, 2006, (and an accumulated surplus of \$128,977), I am unable to conclude that the subject property is “not leased or otherwise used with a view to profit,” which is a requirement for exemption under 35 ILCS 200/15-65.<sup>3</sup>

A statute exempting property from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation. Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430 (1<sup>st</sup> Dist. 1987). Winnetka had the burden of proving here, by clear and convincing evidence, that it falls within the appropriate statutory exemption. Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App. 3d 678 (4<sup>th</sup> Dist. 1994). In this case, Winnetka has failed to prove that the subject property is not rented “with a view to profit,” which is a use specifically proscribed by 35 ILCS 200/15-65.

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<sup>3</sup> Winnetka’s Form 990, for 2005 shows “Gross Rents” of \$34,910, “Rental Expenses,” including depreciation, property taxes and wages and salaries of \$67,469 resulting in a “Net Rental Loss” of \$32,559. In Turnverein v. Bd. Of Appeals, 358 Ill. 135, 144 (1934), the Illinois Supreme Court noted that if property is rented for a return, it is used for profit and “so far as its liability to the burden of taxation is concerned, it is immaterial whether the owner actually makes a profit or sustains a loss.”

Winnetka is a not-for-profit corporation that, at times, leases to “civic and charitable” organizations. Tr. pp. 17-18; App. Ex. Nos. 1, 2 and 12. 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).<sup>4</sup> Because Winnetka has failed to prove that it is not leasing with a “view to profit,” 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 subject property does not qualify for exemption under 35 ILCS 200/15-65(c).

Another distinguishing characteristic of a charitable organization is that no person connected to the organization is permitted gain or profit in connection with the organization. Korzen at 157. Winnetka members and officers receive a discount for rental of Winnetka’s facilities. Ms. Havens was unable to testify as to the amount of the discount because she had “never used the club for any activity.” Tr. p. 98. Winnetka members are charged a lesser fee than nonmembers for attendance at lectures sponsored by Winnetka. Tr. p. 57. Members receive a discount to the Housewalk, sponsored by Winnetka. Tr. pp. 64-65. Winnetka’s brochure soliciting membership states that “membership opens doors to” discounts “to Christie’s on the Village Green (exercise on

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<sup>4</sup> 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.

the premises),” and the “Antique Show Preview Picnic.” App. Ex. No. 5. Based on the testimony and evidence admitted at the hearing, I am unable to conclude that Winnetka does not provide gain or profit to its members or that Winnetka possesses the distinguishing characteristic of a charitable organization that no member profit in connection with the organization.

Winnetka suggests that three of its activities constitute charitable use of its property: namely, the awarding of four scholarships in 2005; allowing certain organizations to use Winnetka’s facilities without paying a rental fee; and allowing certain organizations to use Winnetka’s facilities at a reduced rental fee.

Winnetka offers “Gertrude Nielsen and Kitty Shen Scholarships” to graduating high school students in the New Trier Township District, which includes parts of the villages of Glencoe, Winnetka, Wilmette, Northfield, Kenilworth and Glenview. Information on the scholarships is conveyed to high school guidance counselors in the Township District, advertised in the Pioneer Press, in Winnetka’s newsletter, and on Winnetka’s website. There was testimony that fourteen applications were received and four scholarships, totaling \$9,000, were awarded.<sup>5</sup> Names and addresses of the applicants are blacked out on the applications. An assessment of the applications is made after considering scholarship and citizenship of the applicants and financial need including the Federal-1040 of the applicants’ parents. Tr. pp. 43-47, 50-51, 89, 116; App. Ex. No. 13.

In 2005, Winnetka allowed the following organizations to use their facilities without paying a rental fee: Breast Cancer Walk, Winnetka Youth Organization, Winnetka Northfield Public Library District (twice, with attendance of 200 people), Village Club Moms & Tots and Winnetka Library. According to the testimony,

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<sup>5</sup> Winnetka’s Form 990 for 2005 shows that scholarships of \$7,000 were awarded. Dept. Ex. No. 2.

Winnetka would have charged “normal, non-charitable organizations” \$2,700 for the rental of the space and Winnetka considers the \$2,700 a “level of subsidy” to the organizations. Tr. pp. 32-35, 62, 78, 80; App. Ex. No. 11. Winnetka’s “normal” rental rates were not admitted into evidence so there is no way to verify the “subsidy.” Winnetka also allowed Christ Church to hold a yearly rummage sale on the subject property, including two weeks of set-up on the first floor and two days for the rummage sale, without paying a rental fee. In turn, Christ Church allows Winnetka to use part of their property for Winnetka’s Antique Show, without paying a fee. Tr. pp. 141-142.

In 2005, Winnetka allowed the following organizations to use their facilities at a reduced rental fee: One to One Learning Center, Greeley PTA, Elkin School of Music, Josselyn Center (for Mental Health), New Trier Democrats (twice), Cub Scouts, Family Service of the North Shore, Haven Youth and Family Services, Winnetka Associates of the Art Institute, Washburne School, New Trier School Physical Education (for rowing practice, 2 hours, six days/week, September through May), Winnetka Community Nursing School, North Shore Country Day School, Hadley School, Winnetka Public School Nursery, Art Institute, Skokie School Foundation, Indiana University, League of Women Voters and Evanston Northwestern. These organizations paid a total rental of \$11,050. According to the testimony and the exhibits, Winnetka would have charged a “normal, non-charitable organization” \$27,300 for these rentals. Winnetka argues that it made a charitable contribution to these organizations of \$16,250, the difference between the rental paid and Winnetka’s “normal” rental rates and that this constitutes “charitable” use of its property. Tr. pp. 32-35, 71-72, 96, 112-113; App. Ex. No. 11.

There are several problems with this “contribution” of \$16,250. First, as stated previously, Winnetka’s “normal” rental rates were not admitted into evidence so there is

no way that I can verify Winnetka's "contribution." Second, Winnetka's calculations assume that the facilities could have been rented out at the same time that the above organizations used the property and I am unable to conclude that this would be the case. For example, New Trier High School's Physical Education Department rented space at Winnetka for two hours/day, Monday through Saturday, September through May. Winnetka charged New Trier \$1,000/semester for this use and estimates that the space could have been rented out at a "normal rate" of \$8,750 per semester. Tr. pp. 35-36; App. Ex. No. 11. The calculation of Winnetka's charitable "contribution" of \$7,750 to New Trier (\$8,750 minus \$1,000) assumes that the exact space could have been rented for two hours a day, Monday through Saturday, September through May. This just does not seem reasonable and no evidence was offered to substantiate it.

As discussed previously, 35 ILCS 200/15-65 requires that property sought to be exempt for charitable purposes must not be leased or used with a view to profit. My research indicates no case in Illinois where a court held that rental income received from a "civic and charitable" organization could be excluded when considering whether the owner of the property leased or used the property with a view to profit. My conclusion from the research is that renting to Weight Watchers for a fee is the same as renting to New Trier High School District's Physical Education Department for a fee as far as determining whether Winnetka is leasing its property with a view to profit and/or using its property for charitable purposes. I am unable to conclude from the testimony and the evidence that Winnetka's "contribution" of \$16,250, the difference between "normal" rental and the rental charged to civic and charitable organizations, constitutes charitable use of its property.

Winnetka's granting of four scholarships in 2005 at a cost of \$9,000 (or \$7,000 on Form 990) and allowing certain organizations to use its facilities for free when "normal rental" would be \$2,700 is laudable, but it certainly does not show that the subject property is used as a headquarters for the dispensation of charitable relief. By way of comparison, Winnetka's expenditures for "Catering" on its Form 990 are \$10,141, approximately equal to its expenditures for scholarship and free use of its facilities.

35 ILCS 200/15-65 requires that property be "exclusively" used for charitable purposes. An "exclusively" charitable purpose need not be interpreted literally as the entity's sole purpose; it should be interpreted to mean the primary purpose, but not a merely incidental or secondary purpose or effect. Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430, 436 (1<sup>st</sup> Dist. 1987.). Incidental acts of beneficence are legally insufficient to establish that the applicant is "exclusively" or primarily a charitable organization. Rogers Park Post No. 108 v. Brenza, 8 Ill. 2d 286 (1956). The testimony and the financial statements show conclusively that Winnetka does not exist to award scholarships or provide free rentals. The scholarships and the free rentals are incidental acts of beneficence and, while laudable, are legally insufficient to establish that the applicant is "exclusively" or primarily a charitable organization. Rogers Park Post No. 108 v. Brenza, 8 Ill. 2d 286 (1956).

Property tax exemptions are inherently injurious to public funds because they impose lost revenue costs on taxing bodies and the overall tax base. In order to minimize the harmful effects of such lost revenue costs, and thereby preserve the Constitutional and statutory limitations that protect the tax base, statutes conferring property tax exemptions are to be strictly construed in favor of taxation. People ex rel. Nordland v. Home for the Aged, 40 Ill. 2d 91 (1968). Great caution must be exercised in determining whether

property is exempt so that only the limited class of properties meant to be exempt actually receives the exempt status that the Legislature intended to confer. Otherwise, any increases in lost revenue costs attributable to unwarranted application of the charitable exemption will cause damage to public treasuries and the overall tax base. In this case, Winnetka has failed to prove that the subject property falls within the limited class of properties meant to be exempt for charitable purposes.

For the above stated reasons, it is recommended that the Department's determination which denied the exemption from 2005 real estate taxes on the grounds that the subject property was not in exempt ownership and not in exempt use should be affirmed, and Cook County Parcel, Property Index Number 05-21-116-001, should not be exempt from 2005 real estate taxes.

ENTER:

Kenneth J. Galvin

March 26, 2008