

PT 05-42

Tax Type: Property Tax

Issue: Charitable Ownership/Use

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

WINNETKA WOMAN'S CLUB,

APPLICANT

v.

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

No: 04-PT-0061

**Real Estate Tax Exemption
For 2003 Tax Year**

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

Cook County Parcel

**Kenneth J. Galvin
Administrative Law Judge**

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 2003 real estate taxes under 35 ILCS 200/15-65 of the Property Tax Code, which exempts all property owned by a charity and actually and exclusively used for charitable purposes.

This controversy arose as follows: On June 17, 2004, 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 2003 real estate taxes for the subject property. The Board reviewed

Winnetka's Application and recommended that the exemption be denied. On August 5, 2004, The Department of Revenue of the State of Illinois (the "Department") accepted the Board's recommendation in a determination finding that the subject property was not in exempt ownership and not in exempt use in 2003. Winnetka filed an appeal of the Department's exemption denial. On July 26, 2005, an evidentiary hearing was held with Ms. Mary Sutherland, President of Winnetka from 2002 through 2004 and a member of its Board of Directors, 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 2003. Tr. p. 13; Dept. Ex. No. 1.
2. Winnetka is located at 485 Maple Street in Winnetka. Winnetka was first incorporated in Illinois in 1910. In 1944, Winnetka was incorporated under the Illinois "General Not For Profit Corporation Act." Tr. pp. 16-18, 55; App. Ex. No. 1 and 1A.
3. Winnetka is exempt from income tax under Section 501(c)(3) of the Internal Revenue Code. Tr. pp. 62-64; App. Ex. No. 13.
4. Winnetka's website advertises "Elegant Celebrations since 1908" with a picture of the building on the subject property. Underneath the picture of the building it states: "Charming turn of the century club perfectly suited for your special event. This historic air-conditioned building is situated in a park-like setting and offers a 2-story Ballroom and separate Reception room accommodating up to 180 guests. Our professional staff will ensure your event

will be a memorable occasion.” “Rental Pricing” is also included on the website. App. Ex. No. 3.

5. The building on the subject property contains a foyer, lower level, kitchen, lounge/living room for meetings and receptions, ballroom, women’s lounge, babysitting room, storage area and a third floor caretaker’s apartment containing a living room, two bedrooms and bathroom. Tr. pp. 57-60; App. Ex. Nos. 12A, 12B, 12C and 14.

6. Winnetka has 220 members who pay annual dues of \$110. Winnetka’s website 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 validity of our community as a whole.” A membership application is available on the website. The website does not advertise that dues may be waived. Tr. pp. 19, 21, 79; App. Ex. No. 2.

7. 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. The Bylaws require that a candidate for admission to the Club be proposed by the Membership Committee. Applications for membership are presented by the Membership Chair to the Board of Directors which 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.” There is no provision in the Bylaws for waiver of dues. Tr. pp. 23-24; App. Ex. No. 4.

8. Winnetka offers “Gertrude Nielsen and Kitty Shen Scholarships.” Information on the scholarships is conveyed to high school guidance counselors in New Trier Township and advertised in the Pioneer Press, a newspaper in New Trier Township. A scholarship application is available on Winnetka’s website. Applications and an income tax return from the applicant’s parents are due in May. Approximately 20 applications are received. An assessment of the applications is made after considering financial need, letters of recommendation, and an essay from the applicant on goals, civic involvement and work experience. Tr. pp. 44-50; App. Ex. Nos. 2 and 3.
9. In June, 2003, three scholarships were awarded. Two of the scholarship recipients lived in Wilmette. All three recipients graduated from New Trier High School. The scholarship awards are made at “The Silver Wicket Croquet Lawn Tournament” with the game played at a nearby park and an “English Buffet Dinner” and scholarship awards ceremony held later on the subject property. There is a \$75 fee to participate and approximately 110 people attend. Tr. pp. 27-34; App. Ex. No. 7.
10. Winnetka raises funds through membership dues, the croquet tournament, an antique show, a house walk, a fashion show and rental of the subject property. Proceeds are used to fund the scholarships and to maintain the building. Fundraisers are open to the public and to members. Tr. pp. 35-36, 50, 81, 84.

11. Winnetka's advertisement in the Pioneer Press states "Rent Our Historic Clubhouse for weddings, reunions, meetings, bar/bat mitzvahs" "Special rates for not-for-profits." Tr. pp. 41-44; App. Ex. Nos. 9 and 10.
12. Winnetka rents the building on the subject property to both the public and to organizations. In 2003, Winnetka allowed 16 organizations to use the subject property at fees ranging from \$100 (League of Women Voters), \$450 (Hadley School for the Blind), \$1,620 (The Miller Foundation concerned with kidney dialysis). Two of the sixteen organizations used the property for free: Winnetka Library (twice) and New Trier Township. The foregone rental from the free usage was \$1,400. Tr. pp. 36-41, 53; App. Ex. Nos. 8A and 8B.
13. Winnetka rents the facilities to the public at various rates depending on the room(s) rented, the number of hours and whether the rental is during "regular season" (January-March) or "peak season" (April-December). On a Saturday, the ballroom, lounge and kitchen rents for five hours for \$1,400 or \$1,800 depending on the season. On a Sunday, the same area rents for three hours for \$1,200 or \$1,500. On Monday-Friday, the same area rents for three hours for \$350 or \$400. There are approximately 12 rentals/year for a total of 60 hours. Tr. pp. 75-76; App. Ex. No. 2.
14. Winnetka's audited "Statement of Activities" for 2003 shows "Total Revenue, Gains and Other Support" of \$265,039, of which \$17,700 (7%) is from "Dues," \$47,279 (18%) is from "Rental Income," \$140,379 (53%) is from "Club Activities" including "Member Programs" and "Fund Raising." "Total Expenses" of \$224,401 include "Fundraising" expense of \$60,173, "Building Occupancy" of \$96,265, and "Grants and Scholarships" of \$6,008. Winnetka

had an “Increase in Net Assets” of \$40,638 in 2003. One-half of the Rental Income is from rental to organizations and one-half is from rental to the public.

Tr. pp. 85-87; App. Ex. No. 11.

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 2003 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 (1st 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. Property may be exempt under this section if it is (1) owned by an entity that is an institution of public charity, (2) actually and exclusively used for charitable purposes and (3) not leased or otherwise used with a view to profit.

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 on the party seeking exemption, and have required such party to prove, 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 (4th Dist. 1994).

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. Methodist Old People's Home v. Korzen, 39 Ill. 2d 149, 156 (1968).

I am unable to conclude, based on the evidence and testimony presented at the evidentiary hearing, that the subject property is actually owned by Winnetka, that the subject property is exclusively used for charitable purposes and that the subject property is not leased or otherwise used with a view to profit. With regard to ownership, no deed or other document establishing ownership was admitted at the hearing and there was no testimony as to ownership of the property. Without evidence of a deed or other document, I am unable to conclude that the property is actually owned by Winnetka Woman's Club. The Department denied the exemption in this case first because "the property is not in exempt ownership." Dept. Ex. No. 1. Accordingly, it was absolutely essential that the applicant prove ownership of the subject property at the evidentiary hearing. Because the applicant failed to present any evidence as to ownership, I am unable to conclude that the subject property is in "exempt ownership." Winnetka's exemption request must, as a matter of law, fail because the applicant has failed to prove that the subject property is in exempt ownership, one of the requirements of 35 ILCS/15-65 of the Property Tax Code.

Assuming, *arguendo*, that the subject property is in exempt ownership, I am unable to conclude that the subject property is used "exclusively" 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 (1st 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).

Winnetka's website advertises 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." App. Ex. No. 2. Winnetka is, in fact, a membership organization which exists to serve its members. A candidate for admission to the Club must be proposed by the Membership Committee. The Board of Directors of Winnetka "considers" the applications for membership and "votes upon their admission." Ms. Sutherland testified that no candidate is refused admission. Tr. p. 26. This testimony is at odds with the Bylaws, which require that members be "proposed," and considered and voted upon by the Board of Directors. App. Ex. No. 4.

The Bylaws also state that a newly elected member shall not be enrolled "until dues for the current year have been paid." There is no provision in the Bylaws for waiver of dues. The Bylaws state that "[I]f dues are not paid by July 31, membership shall be forfeited." App. Ex. No. 4. Ms. Sutherland testified that there is "a provision or a capacity of the organization to waive the membership fee." Tr. p. 26. It was never explained at the evidentiary hearing where this "provision" or "capacity" was stated or written. It is unclear how a candidate who wants to "provide philanthropy within the framework of friendship" but cannot afford the yearly membership dues would know that membership in Winnetka was possible.

Three scholarships were awarded in 2003 and two of the scholarship recipients lived in Winnetka. Ms. Sutherland testified that the scholarships for 2003 totaled \$8,000. Tr. p. 33. "Grants and Scholarships" on Winnetka's financial statements for fiscal year 2003 show \$6,008.¹ App. Ex. No. 11. There was no testimony at the hearing as to whether the mothers of the recipients of scholarships were members of Winnetka. Ms.

Sutherland testified that when an application is received, all identifying features, such as name and address are deleted, so that the applications can be evaluated blindly by Winnetka's Philanthropy Committee. Tr. pp. 47-48. The scholarship application does not state that it is limited to children of non-members. App. Ex. No. 3. Ms. Sutherland testified that if Winnetka were found to be tax exempt, instead of paying property taxes, "we would be giving more scholarships." Tr. p. 54.

Winnetka's financial statements do not bear this out. Winnetka had an excess of revenue over expenses of \$40,638 in 2003, which was added to an existing excess of \$67,417 accumulated prior to 2003. Winnetka awarded only \$8,000 or \$6,000 in scholarships during the year. App. Ex. No. 11. The renting of the subject property to the public and the rental "at a very discounted rate to our brother and sister charitable organizations" yielded \$47,279 in "Rental Income" for 2003. Tr. p. 36; App. Ex. No. 11. With Winnetka having an excess of revenue over expenses of \$40,638 in 2003, I am unable to conclude that the subject property is "not leased or otherwise used with a view to profit." The testimony and the financial statements show conclusively that Winnetka does not exist to award scholarships. The scholarships are an incidental act of beneficence and 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).

Winnetka exists because of the mutual interests of its membership and the benefits of "The Club" flow to its members. The website advertises an "Annual Antique Show," "Housewalk: A Spectrum of Lifestyles," "Silver Wicket Croquet Tournament and Lawn Party on the Village Green," "A Night Hearts Valentine Gala," and "Salsa

¹ I presume that Ms. Sutherland was testifying as to scholarships on a calendar year basis whereas the

Aerobics with Allegra.” App. Ex. No. 3. If the primary benefit of an organization flows to its members and not the public, then an exemption will be denied. Chicago Bar Association v. Department of Revenue, 177 Ill. App. 3d 896 (2d Dist. 1988). 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. 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 love of country, 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 on Winnetka’s website that “The Club” “provides a network of civic engagement and involvement important to the vitality of our community as a whole.” App. Ex. No. 2. 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 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. Winnetka’s awarding of three scholarships in 2003 is laudable, but it certainly does not show that the subject property is used as a “headquarters for the dispensation of charitable relief.”

For the above stated reasons, it is recommended that the Department’s determination which denied the exemption from 2003 real estate taxes on the grounds

financial statements are on a fiscal year, ending May 31, basis.

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 2003 real estate taxes.

December 15, 2005

Kenneth J. Galvin
Administrative Law Judge