

PT 15-07

Tax Type: Property Tax

Tax Issue: Charitable Ownership/Use

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

**MORTON OPTIMIST CLUB,
APPLICANT**

v.

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

**No. 13-PT-0019
Real Estate Tax Exemption
For 2013 Tax Year
P.I.N. 06-06-04-301-015**

Tazewell County Parcel

**Kelly K. Yi
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. Robin Gill, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Mr. Andrew Crouch of Beckendorf & Beckendorf, P.C., on behalf of Morton Optimist Club.

SYNOPSIS: This proceeding raises the issue of whether Tazewell County Parcel, identified by property index number 06-06-04-301-015 (hereinafter “subject property” or “cabin”), qualifies for exemption from 2013 real estate taxes under 35 ILCS 200/15-65, which exempts all property owned by a charity, actually and exclusively used for charitable purposes, and not leased or otherwise used with a view to profit. 35 ILCS 200/15-65(a).

On March 28, 2013, Morton Optimist Club (hereinafter “MOC” or “Applicant”) filed an application for Non-homestead Property Tax Exemption with the Tazewell County Board of Review seeking exemption from 2013 real estate taxes for the subject property. The Board reviewed the application and recommended that a full exemption be granted. The Department of

Revenue of the State of Illinois (hereinafter the “Department”) reversed the Board’s recommendation in a determination dated July 5, 2013, finding that the subject property was not in exempt ownership or use. Applicant filed a timely appeal of the Department’s exemption denial. On May 14, 2014, a formal administrative hearing was held before Administrative Law Judge Linda Olivero¹ with Mr. Joe Leibold, executive director of MOC testifying. Following a careful review of the testimony and evidence, it is recommended that the Department’s determination be affirmed.

FINDINGS OF FACT:

1. Dept. Ex. No. 1 establishes the Department’s jurisdiction over this matter and its determination that the subject property was not in exempt ownership or use during 2013. Tr. p. 5; Dept. Ex. 1, p. 5.
2. Applicant originally incorporated in 1940 under the name Optimist Club of Morton, Illinois, but changed its name to Morton Optimist Club in March 2010 following its disaffiliation from Optimist International in February 2010. Dept. Ex. 1, pp. 19-22.
3. On November 27, 2012, Applicant transferred title to the subject property, located at 22464 N. Main Street, Morton, Illinois, to its current name through a quitclaim deed. Dept. Ex. 1, p. 17.
4. Applicant is exempt under Section 501(c)(3) of the Internal Revenue Code. Dept. Ex. 1, p. 11.
5. The subject property is four acres in size and consists of a club house of 1700 sq. ft, a utility shed of 120 sq. ft, and a covered cement patio of 384 sq. ft. Tr. p. 16; Dept. Ex. 1, p. 6.

¹ ALJ Olivero, currently on leave, was unable to write this Recommendation. The Recommendation is based on the review of the hearing transcript and the exhibits admitted at hearing. Credibility of the witness is not at issue.

6. Applicant's mission is to "develop Optimism as a philosophy of life, promote an active interest in good government and civic affairs, inspire respect for the law, promote patriotism and work for friendships among all people, and aid and encourage the development of youth." Dept. Ex. 1, p. 26.
7. More specifically, Applicant's purpose is: 1) to establish, sponsor, acquire, support, erect, maintain, control, own, operate, equip and develop, directly or indirectly, a facility or property that can be utilized by the youth and other charitable or exempt organizations and promote said purpose, all for its benefit and of its affiliates or subsidiaries and the general public; 2) to coordinate activities with affiliate and subsidiary organizations as those pursue charitable, educational, scientific, and other purposes; 3) to foster, promote, develop, encourage, maintain, receive, and accept funds, gifts and contributions for and on behalf of such purposes; and 4) to establish, conduct, sponsor, acquire, control, own, maintain, and operate such other entities and activities, which will support its purposes and that of its affiliates and subsidiaries. Dept. Ex. 1, p. 26.
8. Applicant has members and its bylaws determine the eligibility, rights, and obligations of the members. Dept. Ex. 1, p. 27.
9. Application for membership requires the following: 1) the application must be in writing in the form prescribed by the board of directors; 2) sponsorship by a current member; 3) approval by the board of directors which "may reject *any* application" without explanation; 4) approval by a simple majority of membership present at the meeting; and 5) the applicant's attendance at a minimum of two meetings between the dates of application submission and election. Dept. Ex. 1, p. 28.

10. The membership is suspended if “any indebtedness” due to Applicant is unpaid within 30 days upon written demand and will not be reinstated until all such indebtedness is paid. The membership is forfeited if not reinstated within 30 days. Dept. Ex. 1, p. 29.
11. Its bylaws give the board of directors sole discretion to waive the membership dues in case of financial hardship. Dept. Ex. 1, p. 29.
12. Applicant’s board of directors determines the annual dues amounts. Dept. Ex. 1, p. 32.
13. The minimum recommended donation for annual “supporting members” is \$115 and \$230 for “supporting dinner members” with meal privileges at the bi-monthly meetings. Tr. p. 20; Dept. Ex. 1, p. 10.
14. The members receive a slight reduction in the recommended fee for the private use of the cabin. Tr. p. 21.
15. The cabin is used three times a week by three different youth groups, which meet there all year around except for a short hiatus in the summer. Tr. pp. 13, 15.
16. While there is some outdoor use for the subject property, such as the youth group soccer practice, it is used “more or less” for banquets or meetings. Tr. p. 17.
17. In 2013, the church groups used the cabin three or four times, and the youth groups hosted sports banquets there six or seven times. Neither group pays a fee to use the cabin. Tr. p. 18.
18. Applicant’s membership meets at the cabin twice a month to have “get-togethers,” usually to have a cookout, and to discuss primary activities, service projects, and maintenance issues. Tr. pp. 13-14.

19. The cabin is available for use at a minimum recommended donation of \$125 for up to five hours or \$175 for a day of exclusive use. It is advertised through Applicant's website and by referrals. Tr. pp. 14-15, 22.
20. Mr. Joe Leibold testified that probably a half or more of Applicant's 2013 cabin rental income came from its members' private use for wedding receptions and graduation parties. Tr. pp. 19-20.
21. Applicant's financial statement lists that in 2013, it had \$27,231 of revenues over expenses of \$20,456.² Of the total revenues, \$18,615 came from the following: \$384 in "Unrestricted Donations"; \$6,400 in "Cabin Upgrade & Maintenance Project Donations." \$850 in "Scout Fundraisers"; \$6,050 in "Pumpkin Splash Replacement Match Fundraiser"; and \$4,931 in "Golf Outing Fundraiser." The remaining \$8,616 in revenues came from the three sources listed as: "Membership Donations" of \$4,680, "Cabin Use Fees" of \$1,474, and "Food & Beverage Income" of \$2,462. Expenses consist of \$4,181 in charitable donations given to other non-profit organizations, \$1,748 in food & beverage purchases, \$6,269 in utilities and maintenance, \$2,294 in property tax & storm water, \$2,852 for insurance, \$2,250 for fundraiser expenses, and \$863 for recognition, printing, and postage.³ Dept. Ex. 1, p. 44.

CONCLUSIONS OF LAW:

An examination of the record establishes that Applicant has not demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant an exemption of the subject property from 2013 real estate taxes. Under the reasoning given below,

² These figures exclude portions not funded by Applicant: \$4,923 in revenues and \$4,296 in expenses came from "Boy Scout Troop 85 Activities & Program." Dept. Ex. 1, p. 44.

³ Applicant's financial statement contains a mathematical error by one dollar as the expenses add up to \$20,457, not \$20,456. See Dept. Ex. 1, p. 44.

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).

In accordance with its constitutional authority, the General Assembly enacted section 15-65 of the Property Tax Code, which exempts all property which is both owned by "institutions of public charity" and "actually and exclusively used for charitable or beneficent purposes" provided that the property is not leased or used with a view to profit. 35 ILCS 200/15-65. In Methodist Old Peoples 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; and (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. Korzen at 157. Applicant must also show that the exclusive and primary use of the subject property is for charitable purposes. 35 ILCS 200/15-65.

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 Commission on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461, 469 (2nd Dist. 1995) (“Joint Commission”). Thus, the threshold issue before this tribunal is whether Applicant is “an institution of public charity” under the terms of Korzen. I conclude based on the evidence presented that it is not an “institution of public charity.”

Applicant’s purpose is to develop optimism as a philosophy of life, promote an active interest in good government and civic affairs, inspire respect for the law, promote patriotism, work for friendship among all people, and aid and encourage the development of youth. Mr. Leibold testified that Applicant’s “main charitable purpose” is to maintain and avail free use of the cabin to “those youth groups [it supports] and other church groups and other non-profits in town.” Dept. Ex. 1, p. 12. While its bylaws state that it is a charitable organization, such wording in its governing legal documents is not determinative of this fact. Rather, an analysis of

applicant's activities is necessary to determine whether it actually is a charitable institution. Morton Temple Association, Inc. v. Department of Revenue, 158 Ill.App.3d 794, 796 (1956).

After a thorough review of the evidence presented, I conclude that Applicant's purported primary purpose is not charitable, in the legal sense. It is an organization with membership eligibility and fee requirements with distinct member benefits and a view to profit from the rental of its cabin. Applicant exists primarily because of its members' mutual interest in promoting friendship among its membership and advancing its advocated way of life by supporting and managing select organization in pursuit of civic engagement, patriotism, respect for the law, and youth development.

In applying the first Korzen characteristic of a charitable organization, the evidence affirms that Applicant does not confer benefits to an indefinite number of persons. Rather, it offers free use of the cabin only to select organizations, a discount rental to the membership, while it seeks and receives, without exception, from the general public a "minimum recommended donation" on par with the prevailing market rate, amounting to a rental fee. Applicant's own statement contradicts its assertion that the use of the cabin is strictly based on donations:

"Scout group usage includes weekly Boy Scout Troop 85 meetings on Monday nights and various Club Scout dens use on Thursday nights. It is available for free use by community youth groups and **paid private rentals at other times.**

There are three other non-profit organizations...in Morton that also rent their locations for group and private receptions, meetings and parties. We survey these organizations' rental fees and our board sets our rental rates to be competitive with these other locations in town." (emphasis added) Dept. Ex. 1, p. 39.

An examination of the "cabin use application" further raises doubts that the "donations" are indeed voluntary. The "cabin use application" states at the very top:

“Please remit two copies, complete one copy (2 pages), sign & return them with separate check or checks for deposit & cabin use to our POB address below. We require prepayment of minimum \$50 deposit to hold a reservation date reserved more than 7 days in advance.

(Note our detailed Optimist Cabin Use Policies and Rules & item #2 Cancellation Policies)

All proceeds received from the use of the cabin are a donation to the not-for-profit Morton Optimist Club (MOC) to carry out its mission of providing programs and services for the youth of Morton, IL area.” Dept. Ex. 1, p. 41.

This language is sufficiently confusing. Because it requires deposits and checks to be submitted along with the discussion of the cancellation policies,⁴ one may reasonably interpret that the “donation” is a condition precedent to the use of the cabin, especially given that the application includes no fee waiver language. Referring to the public’s use of the cabin, Mr. Leibold testified that “nobody’s ever asked us to waive a fee.” Tr. p. 22.

Applicant makes a public policy argument that without the free use of the cabin, the local youth and other charitable groups would not have a public gathering venue. It says that it “plays an integral [part] in servicing and assisting these organizations as they serve and benefit the community,” without which “fewer services would be available to the local community without additional government action.” Dept. Ex. 1, p. 3. Although Applicant alludes to a government action, it does not assert that there is a government burden to provide a meeting venue to youth and charitable organizations. Its argument appears to be based on the idea that there is an indirect benefit ultimately conferred upon the public through its support of the youth and church groups to achieve its stated purpose in pursuit of shaping a certain way of life that it espouses. Even if there may be a public benefit in maintaining the Applicant’s advocated way of life, an indirect benefit to the public cannot be attributed as Applicant’s charitable purpose. In Board of Certified Safety Professionals of the Americas, Inc. v. Johnson, 112 Ill.2d 542, (1986) (“Board”),

⁴ Applicant did not submit into evidence its cancellation policy.

the court affirmed the Department's denial of property tax exemption to the Board of Certified Safety Professionals, a not-for-profit organization, which issues certificates to safety professionals who pass examinations it conducts. The court reasoned that the Board's activities benefit primarily a particular class of people, namely safety professionals, and only indirectly the public, in that the public benefits of the activities of the members of the safety profession are the result of services rendered by those members, who would perform the same function with or without the Board certification. The court then noted that the Board's activities do not reduce the State's burdens since the State does not license or register safety professionals. Board at 546.

Similarly, in Joint Commission, the court noted that Joint Commission's primary activities of development of standard setting, on-site evaluations, decision-making to grant or deny accreditation, and recommendation to improve standard compliance for not-for-profit health organizations did not benefit an indefinite number of persons. Rather, the court concluded that Joint Commission's work only provided an indirect benefit to an indefinite number of persons, while the direct beneficiaries of the Joint Commission's work were the health care providers who, when accredited by the Joint Commission, would receive reimbursement from private insurance and Medicare or Medicaid. Joint Commission at 464, 469.

In the present case, as in Board and Joint Commission, Applicant's charity⁵ does not directly benefit an indefinite number of persons or reduce a burden on government. The public benefits of Applicant's charity are through those youth groups which would continue to mentor children with or without the free use of Applicant's cabin. There is no government burden to provide to youth and charitable organizations a meeting place. Applicant's charity is given only to a specific group; it is not available to the general public, not in the same way it is given to the

⁵ This refers to Applicant's selective offer of free use of the cabin to certain organizations such as the youth and church groups.

local youth and church groups. In view of such disparate treatment in the selective solicitation of the “minimum recommended donation” for the use of the cabin (which amounts to a rental fee), Applicant’s inconsistent statements, and the lack of a clear and advertised fee waiver policy, I find that Applicant has not met by clear and convincing evidence the first Korzen characteristic of a charitable organization.

The second Korzen characteristic that an organization has no capital, capital stock, or shareholders is not at issue. Tr. pp. 30-31. As to the third Korzen characteristic, the Department argues that a measurable amount of Applicant’s funds in 2013 came from cabin rentals, membership dues, and food & beverages sales. Tr. pp. 30-31. The funds from these three sources are listed in Applicant’s financial statement as “Membership Donations” of \$4,680, “Cabin Use Fees” of \$1,474, and “Food & Beverage Income” of \$2,462. They total \$8,616 and represent 32% of Applicant’s 2013 total revenues. While Applicant, in turn, avers that 100% of its revenues came from “donations” (Tr. pp. 20-23), the evidence does not support this assertion. The “Termination of Membership” section of its bylaws demonstrates that “Any member who fails to pay any indebtedness due from him from the Club within thirty days after a demand in writing...shall be automatically suspended from membership.” Dept. Ex. 1, p. 29. The term “indebtedness due” was not clarified but this particular language is at odds with Applicant’s assertion that all of its income came from “donations.” Its bylaws give the board of directors sole discretion to waive membership dues in case of financial hardship, but no evidence was presented of the waiver criteria or that it has ever been granted. As to the funds derived from the cabin rentals, I reiterate the reasoning articulated in the discussion earlier of the first Korzen characteristic. Lastly, the evidence of the membership fees with and without dinner privileges raises questions whether the “Food & Beverage Income” indeed derives from donations. Mr.

Leibold testified that the “Supporting Dinner Membership” fee, which is double the amount of the membership without meal privileges, is “basically an offset of a food fee.” Tr. p. 20. Applicant’s 2013 budget report shows that it had counted on the “Dinner Meeting Meal Fees (\$8 ea)” as it budgeted for the upcoming year. Dept. Ex. 1, p. 10. Based on these findings, I conclude that only 68% of Applicant’s 2013 revenues came from private donations.

There is no case law establishing a threshold percentage of funding by charitable contributions to satisfy the third Korzen characteristic. “Funding by charitable donations can help to establish the identity of an institution as charitable but such funding is not essential.” Provena Covenant Medical Center v. Department of Revenue, 384 Ill. App. 3d 734, 745 (4th Dist. 2008); aff’d, 236 Ill. 2d 368 (2010). In American College of Surgeons v. Korzen, 36 Ill.2d 340, 348 (1967), the Illinois Supreme Court rejected an argument that the college was not a charitable organization because approximately half of its funds came from members’ dues. In Alivio Medical Ctr. v. Dept. of Revenue, 299 Ill.App.3d 647 (1st Dist. 1998), the court noted that Alivio’s patient billing representing 59% of its revenues did not qualify it as a charitable institution. Accordingly, I find that Applicant’s 2013 revenues, 68% of which came from charitable donations and 32% from non-charitable funds, satisfy the third Korzen characteristic of a charitable organization that funds are derived mainly from private and public charity and held in trust for the objects and purposes expressed in the charter.

The fourth Korzen characteristic is a two-prong inquiry. The first-prong is whether the organization dispenses charity to all who need and apply for it. The second-prong regarding whether the organization provides gain or profit in a private sense to any person connected with it is not at issue. Tr. pp. 30-31. As discussed earlier, Applicant’s charity is not universally dispensed. It is given only to the groups that Applicant deems to further its stated purpose, while

all others are asked and have complied, without exception, with the minimum recommended donations of \$125 for up to 5 hours or \$175 per day of exclusive use. Such disparate treatment is not consistent with the notion of charity in the absence of a clear and advertised fee waiver policy.

Applicant's multi-level membership requirements further support this finding. Contrary to its averment that anyone can join it, Applicant's membership and attendant benefits are clearly contingent upon: 1) a current member's sponsorship; 2) approval by the board of directors which "may reject *any* application without giving reasons"; 3) approval by a simple majority of membership present at the meeting; and 4) the applicant's attendance at a minimum of two meetings between the dates of application submission and election. Dept. Ex. 1, pp. 2-3, 28. Mr. Leibold's testimony that the only tangible membership benefit is "a slight reduction" in the recommended fee for the private use of the cabin is unsubstantiated. Tr. p. 21. The evidence shows that only the membership may participate in the "get-togethers" where meals are served, sponsor a new member, vote on a new member, discuss primary activities, and introduce and plan service projects. Dept. Ex. 1, p. 14. These are membership benefits not available to anyone outside the membership.

Applicant argues that pursuant to The Arts Club of Chicago v. Department of Revenue, 334 Ill.App.3d 235 (1st Dist. 2002) ("The Arts Club"), it need not offer every conceivable benefit, incidental to its primary purpose, to an indefinite number of persons:

"The Arts Club was a membership organization, had the opportunity to eat lunch in the club's dining room and host parties at the club[,] were available only to members and their guests, but the club regularly gave the general public opportunity to view its permanent collection and temporary exhibits as well as the opportunity to attend various artistic programs and events that it hosts." Tr. p. 27.

The Arts Club is factually distinguishable from the present case. It involved an art club that displayed a permanent collection and temporary exhibits, and hosted special artistic events open to the public at no charge. While the club's membership enjoyed additional benefits of dining privileges and hosting parties at the club, this social function did not alter its primary charitable purpose of exposing the public to modern and avant-garde art. In contrast, Applicant's stated primary charity, to avail free use of the cabin to youth and charitable organizations, is not given to the public. It gives a rental discount to its members and a free use of the cabin to select groups, but it seeks and receives from all others the market rental fees, veiled as "donations." Applicant's primary purpose is not charitable. Applicant is borne out of the members' mutual interest in promoting friendship among its membership and advancing its philosophy by supporting and managing select organizations in pursuit of civic engagement, patriotism, respect for the law, and youth development. Applicant not only gives a majority of its charitable donations to its "own boy scout unit" Boy Scout Troop 85 ("Troop 85"), one of the groups that regularly uses the cabin free of charge, but raises and manages Troop 85's funds as well. Dept. Ex. 1, pp. 12, 43-44. This intimate link between the two groups evidences Applicant's primary purpose noted in its bylaws, *inter alia*, to create, control and operate other entities, which will support Applicant's purposes. Moreover, Applicant's membership overlaps with the groups it supports and they meet regularly to discuss, coordinate events, and receive updates. *See* Tr. pp. 13-14. Its selective support of the youth and church groups by providing free use of the cabin, financial support, and/or control and management of the affiliate groups advance Applicant's advocated philosophy that others in the general public may not espouse. In essence, Applicant gives "charity" to itself. I conclude that Applicant's primary purpose is not to avail free use of the cabin to youth and charitable organizations. Rather, it is a means to achieve Applicant's

primary purpose to promote a certain way of life. Unlike The Arts Club, where the primary charity dispensed was the introduction of modern and avant-garde art to the public at no cost, Applicant's purported primary charity is not extended to the public. The membership benefits are neither additional nor incidental benefits above and beyond the primary charity offered to the public, as was the case in The Arts Club. The act of availing free use of the cabin to select organizations, two of which Applicant has founded and still manages or supports⁶, is not charity. I conclude that Applicant has not met by clear and convincing evidence the first-prong of the fourth Korzen characteristic of a charitable organization.

The fifth Korzen characteristic is whether the organization places obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses. Applicant's purported primary charity is given only to youth and charitable or exempt organizations. It is not given freely to the general public. Applicant's membership receives a cabin rental discount. The discount is not offered to the general public. The record is unequivocal that a person could not become a "member" at any level without meeting the threshold eligibility requirements. Impositions of eligibility criteria for free use of the cabin and multi-level membership eligibility and fees requirements present definite obstacles to those who may avail themselves of Applicant's benefits. It is recognized that charging fees and rendering benefits to persons who are not poverty stricken does not destroy the charitable nature of an organization for tax exemption purposes, but this is only true to the extent that the organization also admits persons who need and seek benefits offered but are unable to pay. Wyndemere Retirement Community v. Department of Revenue, 274 Ill. App. 3d 455 (2nd Dist. 1995). While its bylaws contain a membership fee waiver, granted at Applicant's sole discretion, Applicant

⁶ In addition to sponsoring and managing Boy Scout Troop 85, Applicant founded Morton youth baseball program in the 1940s and still is "an avid supporter." See Tr. p. 12.

presented no evidence that it advertises the membership fee waiver policy.⁷ The record does not show that the general public knew that the free use of the cabin was available. When charity is not advertised, it is impossible to conclude that charity is dispensed to all who need it. Those who need charity may not apply because it is not advertised and they do not know that it is available.

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. Similarly, the court in Alivio Medical Ctr., supra, denied a charitable exemption to a medical care facility in noting, *inter alia*, that “[A]livio does not advertise in any of its brochures that it provides charity care, nor does it post signs stating that it provides such care.” Alivio Medical Ctr. at 652. Applicant here presented no evidence that it displays a sign at the cabin or elsewhere advertising to the general public the availability of free use of the cabin. This is an obstacle to receiving benefits and prevents a conclusion that charity is dispensed to all who need it. A charity dispenses charity and does not obstruct the path to its charitable benefits. Eden Retirement Center v. Dept. of Revenue, 213 Ill. 273, 287 (2004). This, together with the provision in the bylaws for membership termination due to nonpayment, I conclude that Applicant lacks a fee waiver policy for both the membership and the cabin rental. Applicant’s selective solicitation of “donations” for the cabin rental, membership eligibility requirements, membership fees, and the lack of a clear and advertised waiver provision for those unable to pay

⁷ Even if Applicant’s membership fee waiver policy is advertised, its membership eligibility requirements would still preclude the general public from becoming a member.

do not support a finding that Applicant place no obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses. I conclude that Applicant has not met by clear and convincing evidence the fifth Korzen characteristic of a charitable organization.

In balancing the Korzen characteristics of a charitable organization that Applicant possess with an overall focus on whether and how the organization serves the public interest and lessens the State's burden, I conclude that Applicant confers no direct public benefit, nor reduces a government burden. Applicant is a fee and eligibility based membership organization with its purported charity reserved exclusively for youth and charitable organizations in furtherance of its primary purpose to shape the community. The fourth and fifth Korzen characteristics that a charitable organization dispense charity to all who need and apply for it and place no obstacles in their way, are "more than guidelines." They are "essential criteria" and "go to the heart of what it means to be a charitable institution." Provena Covenant Medical Center at 750. While Applicant meets some of the Korzen characteristics, without it meeting the "essential criteria" above, I conclude that Applicant is not an institution of public charity.

Assuming, *arguendo*, that Applicant was a charitable institution, I am unable to conclude that the cabin is used "exclusively" for charitable purposes. Whether the property is actually and exclusively used for charitable purposes depends on the primary use of the property. Methodist Old Peoples Home v. Korzen, 39 Ill. 2d 149, 157 (1968). If the primary use of the property is charitable, then property is "exclusively used" for charitable purposes. Cook County Masonic Temple Association v. Department of Revenue, 104 Ill.App.3d 658, 661 (1st Dist. 1982). Incidental acts of charity by an organization are not enough to establish that the use of the property is charitable. Morton Temple Association, Inc., v. Department of Revenue, 158

Ill.App.3d 794, 796 (3rd Dist. 1987). Applicant contends that even when the members use the cabin, there ultimately is a charitable benefit behind it. Tr. p. 32. I disagree. The cabin is used primarily for non-charitable purposes, for its membership and affiliates with an overlapping membership to socialize and promote a certain philosophy that the general public may not share in and is neither allowed to participate nor benefit from. Availing free use of the cabin to select organizations is not Applicant's primary charitable purpose but is a means to effectuate its broader primary purpose discussed above. In 2013, the general public used the cabin about 6 times and all of them paid the "minimum recommended donations" equivalent to rent. Tr. pp. 21-22. A half or more of Applicant's 2013 cabin rental income resulted from its members' private use for wedding receptions and graduation parties at a discounted rate. Tr. pp. 19-20. It appears that many, if not all, of Applicant's affiliates or subsidiaries are allowed to use Applicant's cabin free of charge. See Tr. pp. 12-13; Dept. Ex. 1, p. 26. There is nothing charitable about Applicant availing the free use of the cabin to its affiliates or subsidiaries, two of which it has founded, and others, it supports.⁸ In essence, Applicant gives "charity" to itself. I conclude that Applicant has failed to meet by clear and convincing evidence that the cabin was exclusively used for charitable purposes in 2013, as required by 35 ILCS 200/15-65.

Applicant contends that there is no view towards profit because all donations received goes towards the operating expenses. Tr. pp. 8, 31-32. However, the concern in 35 ILCS 200/15-65 is whether the property is used with a view to profit, not whether the owner is maximizing profit. In People v. Withers Home, 312 Ill. 136, 140 (1924), the court noted that "former decisions of the court" show that the phrase "not leased or otherwise used with a view to profit," "has the ordinary meaning of the words." "If real estate is leased for rent, whether in

⁸ Applicant has given "charitable donations" to its affiliates and performed "service work" for them, such as donating time at Morton Pumpkin Festival and maintaining school baseball diamonds. See Tr. p. 24.

cash or in other form of consideration, it is used for profit.” Applicant rents the cabin for profit. In Turnverein “Lincoln” v. Bd. Of Appeals, 385 Ill. 134, 144 (1934), the court noted, with regard to the argument that income from the rented property was offset by operation expenses, that “it need only be observed that if property, however owned, is let for a return, it is used for profit and so far as liability to the burden of taxation is concerned, it is immaterial whether the owner actually makes a profit or sustains a loss.” Applicant’s cabin is “let for a return,” and accordingly, must be liable for the burden of taxation.

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 in order to insure that “sound principles” are preserved, unwarranted exemptions from taxation are avoided and 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, Taxpayer bears the burden of proving “by clear and convincing” evidence that the exemption applies. Evangelical Hospitals Corp. v. Department of Revenue, 223 Ill. App. 3d 225 (2nd Dist.1991). Applicant has failed to prove by clear and convincing evidence that it is an exclusively charitable organization, as required for exemption under Illinois statutes, and that it falls within the limited class of institutions meant to be exempt for charitable purposes.

Recommendation:

I recommend that the Applicant's application for a charitable exemption for the year 2013 of Tazewell County Parcel, identified by property index number 06-06-04-301-015, be denied.

Kelly K. Yi
Administrative Law Judge

September 16, 2015