

PT 11-10

Tax Type: Property Tax

Issue: Educational Ownership/Use

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

**CHICAGO CITY JUNIOR
COLLEGE DISTRICT No. 508
APPLICANT**

v.

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

No. 10-PT-0014 (08-16-768)

**Real Estate Tax Exemption
For 2008 Tax Year**

**P.I.N. 17-18-216-042-0000,
17-18-216-043-0000, 17-18-217-033-0000,
17-18-218-041-0000, 17-18-219-034-0000,
17-18-219-036-0000**

Cook County Parcels

**Kenneth J. Galvin
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Mr. Ares Dalianis, Franczek Radelet, P.C., on behalf of Chicago City Junior College District No. 508; 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 a parking lot, identified by the Cook County P.I.N.S, captioned above, qualifies for exemption from 2008 real estate taxes under 35 ILCS 200/15-135, which exempts all property of community college districts not leased by those districts or otherwise used with a view to profit, and 35 ILCS 200/15-125 which exempts parking areas, owned by a school district, not leased or used for

profit, when used as part of a use for which exemption is provided in the Property Tax Code.

The controversy arises as follows: On September 3, 2009, Chicago City Junior College District No. 508 (hereinafter “Malcolm X College” or “MXC”) filed a Real Estate Exemption Complaint, consisting of eleven P.I.N.S, with the Board of Review of Cook County. On November 5, 2009, the Department granted a property tax exemption for MXC, consisting of 5 P.I.N.S, but denied the exemption for the six P.I.N.S, captioned above, which comprise MXC’s parking lot, finding that the parking lot was not in exempt use. On January 14, 2010, MXC protested the denial of the exemption for the parking lot and requested a hearing in this matter.

On December 14, 2010, MXC and the Department submitted a “Stipulation of Facts,” (“Stip.”) in lieu of an evidentiary hearing, and requested a briefing schedule. On January 21, 2011, MXC submitted its “Post Hearing Brief” (“App. Brief”). On February 25, 2011, the Department submitted a “Response Brief” (“Dept. Resp.”) and on March 11, 2011, MXC submitted a “Reply Brief” (“App. Reply”). Following a careful review of the record, it is recommended that the Department’s denial of the exemption for the parking lot for the 2008 assessment year be affirmed.

STIPULATION OF FACTS:

1. City Colleges of Chicago owns the property commonly known as Malcolm X College, 1900 West Van Buren Street, Chicago, Illinois, and specifically identified by the following Property Index Numbers (PINS):
 - a. 17-18-216-042-0000

- b. 17-18-216-043-0000
 - c. 17-18-217-033-0000
 - d. 17-18-218-041-0000
 - e. 17-18-219-034-0000
 - f. 17-18-219-036-0000
 - g. 17-18-219-037-0000
 - h. 17-18-224-035-0000
 - i. 17-18-225-036-0000
 - j. 17-18-226-026-0000
 - k. 17-18-227-033-0000.
2. City Colleges of Chicago acquired Malcolm X College from the Public Building Commission of Chicago via Quit Claim Deed of Reconveyance dated October 27, 2008.
 3. City Colleges of Chicago is a body politic and corporate established and operated pursuant to the Illinois Public Community Colleges Act with the powers enumerated therein (110 ILCS 805/1-1 et seq.).
 4. Under the Property Tax Code, “All property of public school districts or public community college districts not leased by those districts or otherwise used with a view to profit is exempt.” 35 ILCS 200/15-135.
 5. Under the Property Tax Code, “Parking areas, not leased or used for profit other than those lease or rental agreements subject to subsection (b) of this Section, when used as a part of a use for which an exemption is provided by this Code and owned by any school district, non-profit hospital, school, or religious or charitable

- institution which meets the qualifications for exemption, are exempt.” 35 ILCS 200/15-125.
6. The Illinois Department of Revenue approved the property tax exemption for Malcolm X College, except for the parking lot. Stip., Exhibit A.
 7. Of the PINs listed above, the following are the PINS on which the parking lot of Malcolm X College is constructed:
 - a. 17-18-216-042-0000
 - b. 17-18-216-043-0000
 - c. 17-18-217-033-0000
 - d. 17-18-218-041-0000
 - e. 17-18-219-034-0000
 - f. 17-18-219-036-0000
 8. The only issue City Colleges of Chicago contests is the denial of the exemption for the parking lot.
 9. The cost to repair the Malcolm X College parking lot in 2009 was \$4.8 million for an amortization of \$241,000 per year.
 10. In Fiscal Year 2008, Malcolm X College’s total unrestricted revenue was \$30.1 million and total unrestricted expenses were \$26.5 million. The expenses included \$194,000 for student scholarships, grants and waivers separate from the scholarships paid from the United Center Joint Venture.
 11. The Malcolm X College parking lot is the subject of an agreement between City Colleges of Chicago and United Center Joint Venture, an Illinois partnership, (the “Usage Agreement”) that was entered into prior to the 2008 tax year and that

extends through 2012. Pursuant to the Usage Agreement, in 2004 funds were deposited into City Colleges of Chicago accounts by United Center Joint Venture for the provision of scholarships to students of Malcolm X College. A true and correct copy of the Usage Agreement is included in the record as Stip., Exhibit B.

CONCLUSIONS OF LAW:

An examination of the record establishes that MXC has not demonstrated, by the presentation of testimony, exhibits and argument, evidence sufficient to warrant exempting the above captioned P.I.N.S from property taxes for the 2008 assessment year. In support thereof, I make the following conclusions.

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

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

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

Thus, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App. 3d 497 (1st Dist. 1983).

Consequently, there is a presumption that no exemption is intended. Rotary International v. Paschen, 14 Ill. 2d 480 (1958). Furthermore, the party claiming the exemption has the burden of showing that the property clearly falls within the statutory exemption. People ex rel. Nordlund v. Home for the Aged, 40 Ill. 2d 91 (1968). Additionally, the exemption provisions must be strictly construed against exemption. Methodist Old Peoples Home v. Korzen, 39 Ill. 2d 149 (1968).

In accordance with its constitutional authority, the General Assembly enacted section 15-135 of the Property Tax Code, which exempts “all property of public school districts or public community college districts not leased by those districts or otherwise used with a view to profit,” [35 ILCS 200/15-135] and section 15-125, which exempts “parking areas, not leased or used for profit other than those lease or rental agreements subject to subsection (b) of this Section, when used as a part of a use for which an exemption is provided by this Code and owned by any school district, non-profit hospital, school, or religious or charitable institution which meets the qualifications for exemption.” 35 ILCS 200/15-125. An applicant seeking a property tax exemption for its parking area must show three factors: (1) ownership of the parking area by an exempt institution; (2) that the parking area is not leased or used for profit, and; (3) that the parking area is used as part of a use for which exemption is provided by statute. Mount Calvary Baptist Church, Inc. v. Zehnder, 302 Ill. App. 3d 661 (1st Dist. 1998).

The Department’s denial of the exemption for the parking lot stated that the property was not in exempt use. Stip., Exhibit A. I conclude from this denial that the Department found the parking lot to be owned by MXC and, accordingly, ownership is not at issue in this proceeding.

Based on the record in this case, I conclude that the parking lot is used with a view to profit, a use proscribed by both 35 ILCS 200/15-135 and 35 ILCS 200/15-125. MXC entered into the “Usage Agreement” with the United Center Joint Venture (hereinafter “Joint Venture”) in an arms-length, commercial transaction. According to the “Affidavit of J. Randall Dempsey,” Controller for Community College District No. 508, the Usage Agreement resulted in revenues of \$124,612.30 for City Colleges of Chicago in 2008, and of these revenues, \$107,633.06 were expended in support of athletic programs.¹ The Usage Agreement has been in effect for several years. Stip., No. 11. According to Mr. Dempsey’s affidavit, “[O]f the funds previously received by City Colleges of Chicago for scholarships, \$25,613 from the Foundation account and \$16,000 from the Agency account was provided to students to assist with tuition and fee costs” in 2008.² Stip., Exhibit C.

In 2008, the revenues received under the Usage Agreement may have been used for the purposes described in the preceding paragraph, but the Usage Agreement does not require that the funds be so used. Section 4(d) of the Usage Agreement states that “all payments received under this contract are unrestricted revenues to MXC.” “The [Joint] Venture understands that pursuant to Illinois law, the MXC Board of Trustees authorizes, approves and allocates all funds received by the District.” Stip., Exhibit B. This provision is not discussed in the Stipulation of Facts or in the documents submitted to this tribunal, but a reasonable interpretation of it is that MXC could use the “unrestricted” revenues from the Usage Agreement in any way that MXC sees fit. The Department

¹ The affidavit of J. Randall Dempsey is included in the record as Stip., Exhibit C and incorporated by reference into the Stipulation. The parties to this Stipulation agree that if called to testify, Mr. Dempsey would testify in the manner indicated therein.

² There is no evidence in the record regarding the “Foundation account” or the “Agency account.”

argues in its Response that MXC's freedom to use the funds paid by the Joint Venture in any way that it wishes, "frees other funds received by the college for use in other ways that might have been possible had it not been for the arrangement entered into with the United Joint Venture." This constitutes, in the Department's opinion, a "view to profit." Dept. Resp. p. 6.

I agree. The concern in 35 ILCS 200/15-135 and 35 ILCS 200/15-125 is whether the property is leased or used with a view to profit. In People v. Withers Home, 312 Ill. 136, 140 (1924), the Court noted that "former decisions of this 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 cash or in other forms of consideration, it is used for profit." MXC is leasing the parking lots for "other forms of consideration," and these "other forms" free up funds for MXC to use elsewhere.³ In Turnverein "Lincoln" v. Bd. Of Appeals, 358 Ill. 135, 143 (1934), the Court noted succinctly that educational institutions are not organized for profit and that the application of revenues derived from property owned by such institutions to school purposes will not exempt the property producing the revenues from taxation unless the particular property itself is devoted exclusively to such use. The parking lot at issue here, the property producing the revenues, is not devoted exclusively to MXC's use.

The Stipulation of Facts, No. 9, states that the cost to repair the Malcolm X College parking lot in 2009 was \$4.8 million for an amortization of \$241,000 per year.

³ It must also be noted that Provision 4(e) of the "First Amendment to the [Usage] Agreement" states that "in addition to the above payments," the Venture will provide MXC with one suite for two basketball games played by the Chicago Bulls at the Stadium and one suite for two hockey games played by the Chicago Blackhawks at the Stadium. "Each suite will include 20 games tickets, four parking passes and a standard food package with beer, wine and soft drinks." Stip., Exhibit B. A plain reading of this provision forces me to conclude that there were "other forms of consideration" made to MXC by the Joint Venture, evidencing further that the subject property is used by MXC with a view toward profit.

The year at issue in this case is 2008, and evidence of 2009 expenditures is irrelevant to the year at issue. It appears, however, that MXC's argument is that they are expending more to repair the lot, \$241,000/year, than they are receiving and putting toward scholarships. In Turnverein, the Court stated, with regard to the argument that income from the rented property was offset by operating 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. *Id.* at 144. In Village of Oak Park v. Rosewell, 115 Ill. App. 3d 497, 500 (1st Dist. 1983), where a parking lot was leased by a religious institution to a Village for use as a municipal parking lot, the court noted that where property is leased with a view to profit, it is "immaterial" whether the income derived is used for religious purposes and it is "irrelevant" whether the property actually generates a profit or a loss, or whether the revenues are totally offset by operational or maintenance costs. MXC is leasing the parking lot "for a return" to be paid in unrestricted funds. It is irrelevant and immaterial that in future years, MXC's revenues from the rental may be less than it pays in repair costs for the lot.

Moreover, the documents of record force me to conclude that the Joint Venture also uses the parking lot for profit. The Joint Venture is an "Illinois partnership." Stip., No. 11. There is nothing in the record to show that the Joint Venture is a not-for-profit Illinois partnership and since all debatable questions are to be resolved in favor of taxation and against exemption, I infer the opposite. It is therefore reasonable to conclude that the Joint Venture entered into this agreement with MXC with the perfectly rational intent to make a profit. The terms of the Usage Agreement permit the Joint Venture "to

park cars for events to be held at the United Center located at 1901 West Madison Street (the 'Stadium').” “Standard Parking Corporation or other independent contractor designated by the [Joint] Venture shall be retained to operate the Lot in connection with events at the Stadium.” According to the Usage Agreement, “all spaces in the Lot will be made available to the [Joint] Venture unless otherwise needed by the students, faculty, staff and visitors to MXC, provided, however, not less than 353 spaces will be made available for each Stadium event.” Stip., Exhibit B.

According to Mr. Dempsey's Affidavit, the Joint Venture used 50,250 spaces in 2008. Stip., Exhibit C. If the Joint Venture charged \$10 for each parking space, it would have grossed \$502,500 in revenue from parking cars in MXC's lot. There is no evidence in the record as to the Joint Venture's costs in operating the lot. But MXC is asking this tribunal to take this parking lot off the tax rolls, to remove its “liability to the burden of taxation,” while the lot may have grossed \$502,500 in revenue in 2008, for a for-profit partnership. Taking this property off the tax rolls allows MXC to increase its own profit from the Usage Agreement while significant benefit, including monetary gain, is made by a non-exempt third party.

The statutes at issue in this matter preclude exemption if property is being used for profit. In looking at the ordinary meaning of the words “with a view to profit,” I conclude that the record in this case establishes that MXC used the parking lot for profit as it rented the lot to the Joint Venture in an arms-length transaction. I conclude further that the Joint Venture is a for-profit enterprise and that it used the parking lot for profit as it charged for and parked 50,250 cars for events at the United Center in 2008. MXC has

failed to prove that its requested exemption falls within the statutory exemption for parking lots as provided for by the Property Tax Code.

To qualify for exemption, a property used for more than one purpose must be used primarily for an exempt purpose and only incidentally for a non-exempt purpose. Illinois Institute of Technology v. Skinner, 49 Ill. 2d 59, 66 (1971). I am unable to conclude from the record of this case that the parking lot at issue is used primarily for parking for MXC. The Usage Agreement provides that “all spaces in the Lot will be made available to the [Joint] Venture unless otherwise needed by the students, faculty, staff and visitors to MXC, provided, however, not less than 353 spaces will be made available for each Stadium event.” Stip., Exhibit B. There is no limit in the Usage Agreement as to how many days the Joint Venture can use the parking lot. The Agreement simply requires that the Joint Venture provide MXC “with a schedule of events at the Stadium, not less than quarterly, but at least one month in advance of Stadium events, to the extent known.”⁴ App. Brief, Exhibit A.

The Agreement allows for extremely broad usage by the Joint Venture. This for-profit partnership can use the parking lot as often as events are booked at the Stadium. No affiliation with MXC is required as a condition for parking in the lot when it is being used by the Joint Venture. It is conceivable, under the Usage Agreement, that the Joint Venture could rent out spaces at MXC’s parking lot to the general public for 365 days/year. On nights when there are events at the Stadium, anyone can park in the lot for any purpose, as long as they pay the market rate. Since “all spaces” are made available to

⁴ The Usage Agreement states at Paragraph 3(b) that “MXC reserves the right to derive revenue from leasing the lot to other entities for use at times when events are not being held at the Stadium.” Stip., Exhibit B. There is no evidence in the record with regard to this clause, which in itself, gives sufficient reason to deny the requested exemption in this case.

the Joint Venture unless they are needed by MXC patrons, it is possible that on the nights when events are booked at the Stadium, the entire lot could be used exclusively by members of the general public paying market rates for space in the lot.

According to the Affidavit of J. Randall Dempsey, the Joint Venture used the parking lot for 90 Bulls and Blackhawk games and 60 “other events.” This represents usage at 150 events in 2008 or approximately 42% of the days in the year. Stip., Exhibit C. Clearly, this is not an “incidental” use of the subject property. Mr. Dempsey’s affidavit avers that for the 90 Bulls and Blackhawks games, 425 spaces were used by the Joint Venture per night, and for the 60 “other events,” 125 spaces were used by the Joint Venture per night. There is no information in the record as to how these amounts were arrived at. No documentation was included to substantiate these amounts. There are no source documents in the record for how the quantity of parking spaces was determined. Because the parties agreed that this case would be submitted for consideration with a stipulated record, Mr. Dempsey was not cross-examined. The parties agreed that if Mr. Dempsey were called to testify, he would testify in the manner contained in his Affidavit. The Department did not concede in any documents in the record that they accepted Mr. Dempsey’s testimony in the Affidavit as true and correct. Additionally, the record contains no evidence on MXC’s actual use of the parking lot. The absence of this evidence in the record allows me to conclude that MXC’s actual use of the parking lot may have been less than the Joint Venture’s actual use in 2008.

Where real estate is used for multiple purposes, and can be divided according to specifically identifiable areas of exempt and non-exempt use, it is proper to exempt those parts that are in actual, exempt use and subject the rest to taxation. *Id.* at 64. The record

in this case does not show that any particular parking spaces are reserved for either MXC patrons or the Joint Venture's paying parkers. Because no physical portion of the lot can be identified as having an exclusively exempt use and because the use, as described, is not incidental, MXC's claim for exemption is simply untenable.

WHEREFORE, for the reasons stated above, I recommend that the Department's determination of November 5, 2009 which denied an exemption for the parking lot as comprised by the Cook County P.I.N.S, captioned above, (Department Docket No. 08-16-768, County Reference No. 93538) should be affirmed and that the parking lot should not be exempt from property taxes for the 2008 assessment year.

ENTER:

April 25, 2011

Kenneth J. Galvin
Administrative Law Judge