

PT 14-02

Tax Type: Property Tax

Tax Issue: Exemption For Taxing District Property

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

VILLAGE OF SOUTH HOLLAND,

APPLICANT

v.

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

**No. 12-PT-0016 (11-16-200)
Real Estate Tax Exemption
For 2011 Tax Year
P.I.N. 29-22-500-004-6004
Cook County Parcel**

**Kenneth J. Galvin
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Mr. Timothy C. Lapp, Hiskes, Dillner, O'Donnell, Marovich & Lapp, LTD., on behalf of the Village of South Holland; 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 real estate identified by Cook County Parcel Index Number 29-22-500-004-6004 (hereinafter the "subject property"), qualifies for exemption from 2011 real estate taxes under 35 ILCS 200/15-60(b), which exempts "Taxing District Property," including "all public buildings belonging to any county, township, or municipality, with the ground on which the buildings are erected."

The controversy arises as follows: On December 20, 2011, the Village of South Holland (hereinafter the "Village" or the "applicant") filed an Application for Property Tax Exemption for the subject property with the Cook County Board of Review (hereinafter the "Board"). The Board reviewed the Village's Application and recommended to the Illinois Department of

Revenue (hereinafter the “Department”) that a partial year exemption be granted beginning January 26, 2011.

The Department rejected the Board’s recommendation on March 29, 2012, finding that the property was not in exempt use or ownership and that “[A]pplicant is not the owner of the property. Applicant is lessee of the property. No leasehold assessment has been made for the assessment year for which application has been made.” Dept. Ex. No. 1. On June 12, 2012, the Village filed a request for a hearing as to the denial and presented evidence at a formal evidentiary hearing on June 13, 2013. Following a careful review of the record, it is recommended that the Department’s exemption denial be reversed and that the five buildings owned by the Village, located on the subject property, be exempt beginning January 26, 2011.

FINDINGS OF FACT:

1. Dept. Ex. No. 1 establishes the Department’s jurisdiction over this matter and its position that the subject property, in 2011, was not in exempt use or ownership and that “[A]pplicant is not the owner of the property. Applicant is lessee of the property. No leasehold assessment has been made for the assessment year for which application has been made.” Tr. p. 5; Dept. Ex. No. 1.
2. Starting in August of 1973, L & W Supply Company leased the underlying land on the subject property from three railroads that owned the property. L & W Supply owned five buildings on the land. On January 26, 2011, L & W assigned the lease of the land to the Village. Tr. pp. 6-9; App. Ex. Nos. 2 and 3 (“Assignment and Assumption of Lease” and “Lease,” respectively).
3. Also on January 26, 2011, L & W Supply Company sold the “5 buildings and related improvements constructed by the Seller on property owned by Union Pacific Railroad

Company and located at 16778 South Park Avenue, South Holland, Illinois” to the Village.
Tr. pp. 6-7; App. Ex. No. 1 (“Bill of Sale”).

4. The Village is currently leasing the underlying land from the three railroads for \$9,500/annually. The Village is seeking exemption for the five buildings on the land, but not the underlying land. Tr. pp. 13-14; App. Ex. No. 5.
5. The five buildings are “commercial type warehouses” which the Village has been using for parking of machinery, parking of vehicles and storing of seasonal decorations. The Village began using the five buildings on January 26, 2011. “The Village and no one else utilize the property.” Tr. p. 6; App. Ex. No. 5.

CONCLUSIONS OF LAW:

An examination of the record establishes that the Village has demonstrated by the presentation of testimony, exhibits and argument, evidence sufficient to warrant an exemption of the five buildings on the subject property beginning January 26, 2011. In support thereof, I make the following conclusions.

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

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

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

General Assembly to confer tax exemptions within the limits imposed by the constitution. Locust Grove Cemetery v. Rose, 16 Ill. 2d 132 (1959). Thus, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App. 3d 497 (1st Dist. 1983).

In accordance with its constitutional authority, the General Assembly enacted section 15-60 of the Property Tax Code which exempts certain “Taxing District Property,” including “all public buildings belonging to any county, township or municipality, with the ground on which the buildings are erected.” 35 ILCS 200/15-60(b). On January 26, 2011, L & W Supply Company sold the “5 buildings and related improvements constructed by the Seller on property owned by Union Pacific Railroad Company and located at 16778 South Park Avenue, South Holland, Illinois” to the Village. Tr. pp. 6-7; App. Ex. No. 1 (“Bill of Sale”). In the instant case, the Village is seeking exemption for the five buildings that it owns on the subject property. Tr. pp. 13-14; App. Ex. No. 5. The Village is currently leasing the underlying land from the three railroads for \$9,500/annually. The Village is not seeking exemption of the land. Tr. pp. 13-14; App. Ex. No. 5 (“Assignment and Assumption of Lease” and “Lease,” respectively).

The five buildings are “commercial type warehouses” which the Village has been using for parking of machinery, parking of vehicles and storing of seasonal decorations.” The Village began using the five buildings on January 26, 2011. “The Village and no one else utilize the property.” Tr. p. 6; App. Ex. No. 5. The Village’s position in this case is that the buildings can be treated as exempt municipal property, even if the land is treated as taxable property. App. Ex. No. 5. The Village’s position is supported by City of Chicago v. Illinois Department of Revenue, 147 Ill. 2d 484 (1992).

In City of Chicago, the Illinois Supreme Court was asked to determine the tax exempt status of two buildings under Section 19.6 of the Property Tax Code which exempted “all public buildings belonging to any county, township, city or incorporated town, with the ground on which such buildings are erected.” 35 ILCS 205/19.6 (1992).¹ The buildings were owned by the City of Chicago, The Court noted that the City met its burden of proving that the two buildings “belong” to the City. “The issue which arises, however, is whether the exemption may be applied to exempt the buildings separate from the underlying land.” *Id.* at 493-494.

In City of Chicago, the Department of Revenue argued that the phrase in the statute “public buildings with the ground” indicated that the exemption was “intended to operate so as to exempt both buildings and underlying land.” According to the Department, the legislature’s use of the phrase “with the ground” instead of the phrase “and the ground” indicated that the legislature “never intended to exempt buildings separate from the underlying land.” The Court noted, however, that the phrase “is just as susceptible of being interpreted to *permissibly* include the ground, as it is of being interpreted to *mandate* that the ground be included.” “... Given section 19.6’s express statement that public buildings belonging to a city be exempt from taxation, the legislature could not have intended that this exemption turn on the mere fortuity that the underlying land be also in exempt ownership.” *Id.* at 494-495. The Court ultimately determined that “there appears to be no statutory, constitutional or tax law impediment to exemption of the [buildings] separate from the underlying land.” *Id.* at 499. “The purpose and object of the exemption provisions ... are to free property controlled and used by public bodies for public use from the burdens of taxation under circumstances where the property interests are

¹ 35 ILCS 205/19.6 is almost identical to 35 ILCS 200/15-60(b) with “city or incorporated town” replaced by “municipality.”

neither transient nor trivial.” *Id.* at 509. The Court exempted the two buildings owned by the City while finding that the underlying land, owned by a private party, was not exempt.²

It is well established in Illinois that a statute exempting property from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation. Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430 (1st Dist. 1987). Based on these rules of construction, Illinois courts have placed the burden of proof upon the party seeking exemption, and have required such party to prove, by clear and 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). The Village, having the burden of proof in the instant case, has proven by clear and convincing evidence that the five buildings, purchased by the Village on January 26, 2011, “belong” to the Village. The buildings were used for public purposes beginning on January 26, 2011 and the exemption of these five buildings under 35 ILCS 200/15-60(b) is supported by the City of Chicago case, as discussed above.

WHEREFORE, for the reasons stated above, it is recommended that the Department’s determination which denied the exemption from 2011 real estate taxes should be reversed and the five buildings located on Cook County P.I.N. 29-22-500-004-6004 should be exempt from property taxes beginning January 26, 2011, equal to 93% of the 2011 assessment year. The land underlying the five buildings remains taxable in 2011.

April 8, 2014

Kenneth J. Galvin
Administrative Law Judge

² The City, which leased the underlying land, argued for its exemption. The Court found that the City had “evidenced insufficient incidents of ownership” in the lease. *Id.* at 509.

