

PT 09-13

Tax Type: Property Tax

Issue: Railroad Assessment/Non-Carrier Real Estate

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

**ST. CLAIR COUNTY ASSESSOR and
THE CITY OF CENTREVILLE,
Objectors**

v.

UNION PACIFIC RAILROAD CO.

Applicant

Docket No. 08-PT-0010

Tax Year 2007

RECOMMENDATION FOR DISPOSITION

Appearances: Jeff Glass of Hinshaw & Culbertson for St. Clair County Assessor and the City of Centreville; Mark R. Davis of O’Keefe, Lyons & Hynes, LLC for Union Pacific Railroad Company; Robin Gill, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois

Synopsis:

The St. Clair County Assessor and the City of Centreville (“objectors”) filed objections to the classification of property owned by Union Pacific Railroad Company (“Union Pacific”) as “operating property” for the year 2007. The objectors contend the property should be classified as “non-carrier real estate” as defined in section 11-70(d) of the Property Tax Code (35 ILCS 200/1-1 *et seq.*). Union Pacific filed a Motion to Dismiss this matter, arguing that the Department of Revenue (“Department”) has no jurisdiction to hear this case because the objectors did not timely file their objections.

Union Pacific also filed a Motion for Summary Judgment, arguing that the property is properly classified as operating property. The objectors did not file a response to Union Pacific's motions, and the Department agrees with Union Pacific's arguments. After reviewing the motions and the attached exhibits, it is recommended that this matter be resolved in favor of Union Pacific.

FINDINGS OF FACT:

1. Union Pacific owns the twelve parcels of property ("subject property") at issue in this matter. The parcels are located in St. Clair County. (UP Ex. #1, #2)
2. The parcels are contiguous with four railroad tracks running through the middle of the parcels. (UP Ex. #4)
3. For the tax year 2007, Union Pacific filed with the Department forms PTAX-532 through 537, which list all operating and non-carrier real estate owned or leased by Union Pacific.¹ (UP Ex. #8)
4. The subject property is listed on form PTAX-533, Continuation of Location of Right of Way and Improvements. (UP Ex. #8, p. 8)
5. On August 17, 2007, the Department sent a letter to the St. Clair County Chief Assessment Officer with copies of the forms PTAX-532 through 537. The letter states, *inter alia*, that if there is any reason to believe that the property listed on the forms does not include all "non-carrier real estate," a written objection should be filed within 30 days of the postmark date on the letter. (UP Ex. #9)
6. On September 5, 2007, the St. Clair County Assessor ("Assessor") sent a letter to the Department objecting to the classification of the subject property as operating

¹ The forms are required to be filed pursuant to section 11-85 of the Property Tax Code (35 ILCS 200/11-85) and section 110.101 of the Department's regulations (86 Ill. Admin. Code §110.101).

- property and alleging that the property should be classified as non-carrier real estate. Attached to the letter was a copy of one page of PTAX-533 wherein the subject property was listed and circled. (UP Ex. #1)
7. The Department did not change the classification of the property and issued form PTAX-105-A, Certification of Assessments of Railroad Property for 2007, to the St. Clair County Clerk and to Union Pacific. Form PTAX-105-A certifies the assessment of the subject property as operating property. (UP Ex. #10)
 8. On December 7, 2007, the Department's assessment of Union Pacific's railroad operating property was published in the Edwardsville Intelligencer. (UP Ex. #11)
 9. On April 21, 2008, the City of Centreville sent a letter to the Department stating that it was again objecting to the classification of the subject property as operating property. (UP Ex. #12)
 10. The subject property contains an auto facility that is used for the purpose of loading and unloading motor vehicles onto and from the railcars. The vehicles are either trucked to the subject property from the manufacturer, or they are delivered from the subject property to dealers. The typical dwell time for the vehicles at this facility is approximately 3 days. (UP Ex. #3, #6)
 11. On October 19, 2002, Union Pacific entered into an "Auto Loading/Unloading and Railcar Switching Agreement" ("Agreement") with Caliber Auto Transfer of St. Louis, Inc. ("Caliber") for Caliber to load and unload the vehicles onto or from the railcars. The Agreement states that the work shall be done to the satisfaction and acceptance of the Railroad Representative, who is Robert J. Jumbeck, the Senior Manager of Auto Facility Operations for Union Pacific. (UP Ex. #6)

12. The role of Caliber is basically to assist Union Pacific by providing personnel to switch railroad cars into and out of the facility, to load and unload vehicles from the railroad cars, and to perform administrative services, including, but not limited to, the waybilling of railroad cars. (UP Ex. #3)
13. Union Pacific continues to have employees working on the subject property, and Union Pacific maintains all security at the facility. (UP Ex. #3)

CONCLUSIONS OF LAW:

Union Pacific's Motion to Dismiss contends the Department does not have jurisdiction over the subject matter of this case because it was not commenced within the time limit allowed under section 8-35 of the Property Tax Code (35 ILCS 200/8-35). The procedures for objecting to the classification of operating property begin in section 110.105 of the Department's regulations, which provides, in relevant part, as follows:

When the railroad returns required under Section 110.101 of this Part have been filed, the Department shall transmit to the Chief County Assessment Officers copies of Form Nos. PTAX-536 and PTAX-537 which list the "non-carrier real estate".... If such assessment officials have reason to believe that the items of property set forth in these Schedules do not include all "non-carrier real estate" of the reporting carrier located within their jurisdiction, they shall, within 30 days from the date of transmittal by the Department, object to the classification adopted by the reporting railroad. Their objection shall be filed with the Department and it shall set forth the location and nature of the property alleged to be classified improperly and the basis for the allegation. The Department thereupon shall consider the facts presented and, if necessary, request additional information from the Chief County Assessment Officer or the railroad or both. Within 60 days after receiving the objection, the Department shall determine whether the property is "non-carrier real estate" or "operating property" and notify the local assessment officers and the reporting carrier of its decision. An application for hearing shall be made in the time and manner provided by Section 8-35 of the Property Tax Code.... 86 Ill. Admin. Code §110.105.

Union Pacific believes the Assessor partially complied with the procedures in this regulation; within 30 days after the Department sent copies of the forms to the Assessor, the Assessor sent a letter on September 5, 2007 objecting to the classification of the subject property.² The Department elected not to change its classification of the subject property, and in compliance with the regulation, the Department notified St. Clair County and Union Pacific of its decision to continue the operating property classification by issuing PTAX-A, which certified its assessment of the subject property.

Union Pacific argues that after the Department sent this notification, the Assessor failed to timely apply for a hearing pursuant to section 8-35, which provides, in part, as follows:

Upon completion of its original assessments, the Department shall publish a complete list of the assessments in the State “official newspaper.” Any person feeling aggrieved by any such assessment may, within 10 days of the date of publication of the list, apply to the Department for a review and correction of that assessment. Upon review of the assessment, the Department shall make any correction as it considers just.

If review of an assessment has been made and notice has been given of the Department’s decision, any party to the proceeding who feels aggrieved by the decision, may file an application for hearing. The application shall be in writing and shall be filed with the Department within 20 days after notice of the decision has been given by certified mail. Petitions for hearing shall state concisely the mistakes alleged to have been made or the new evidence to be presented.

No action for the judicial review of any assessment decision of the Department shall be allowed unless the party commencing such action has filed an application for a hearing and the Department has acted upon the application. 35 ILCS 200/8-35(a).

² Union Pacific contends that the Assessor’s letter sent on September 5, 2007 failed to state a basis for the alleged classification errors as required by the regulation. Because this recommendation resolves the other issues raised by Union Pacific in its favor, whether the failure to state a basis for the alleged errors warrants a dismissal of this case will not be addressed.

The Department's regulation concerning practice and procedure for hearings on property tax matters essentially mirrors section 8-35 and includes the following:

Application for review and correction of any assessment shall be filed with the Department within 10 days from the date of publication of the assessment in the State "official newspaper". When application for review is made, the assessment decision complained of shall be further considered by the Department and notice shall be given of its decision by certified mail. 86 Ill. Admin. Code §110.145.

Union Pacific contends that the Department does not have jurisdiction over the subject matter in this case because after the Department published the assessments in the Edwardsville Intelligencer, the objectors did not send their objection to the Department within 10 days of the date of publication. On April 21, 2008, which was more than 4 months after the publication in the newspaper, the City of Centreville asked the Department to reclassify the property as non-carrier real estate, and the case was sent to the Office of Administrative Hearings. Union Pacific argues that a review of the assessment by the Department is what triggers the right to request a hearing. Because the objectors did not timely object within 10 days from the date of publication in the newspaper, there was no timely request for a review of the assessment by the Department and consequently no review. Union Pacific, therefore, believes there can be no hearing.

Union Pacific notes that in Soo Line Railroad Company v. Hynes, 269 Ill. App. 3d 81 (1st Dist. 1995), the court held that the time limitations, such as the one in this case governing challenges to the classification of railroad property, are mandatory. In that case, the county assessor failed to file its objections to the railroad's designation of its property as non-carrier property within the 30-day time period set forth in section 110.105 of the Department's regulations. The Department's deputy director had previously assured the county assessor that the 30-day deadline would not be enforced.

The court stated that the rule “has all the absolute finality of a statute of repose,” and when the 30-day period elapses, the railroads are free to assume that their characterization of their property will not be disturbed. Soo Line Railroad, at 90.

Union Pacific’s arguments are persuasive. Both section 8-35 of the Code and section 110.145 of the Department’s regulations require objections to the assessment to be filed within 10 days from the date of publication in the State “official newspaper.” The objectors in this case waited over 4 months after the publication to file their objections. Because the objections were not timely filed, the Department did not review the assessment and give notice of its decision by certified mail as required by its regulation. Without a review by the Department, this matter pending in administrative hearings was improperly filed and must, therefore, be dismissed.

Even if it is assumed that the administrative hearings division has jurisdiction over the subject matter in this case, the evidence supports a finding that Union Pacific is entitled to summary judgment because the subject property was properly classified as operating property. Under the Code, railroad property may be classified as either “operating property,” which is property that is used for the railroad’s operating purposes and is assessed by the Department, or “non-carrier real estate,” which is property that is not used for the railroad’s operating purposes and is assessed by the local county assessor. The Code defines the categories as follows:

(b) “Operating property” means all tracks and right of way, all structures and improvements on that right of way, all rights and franchises, all rolling stock and car equipment, and all other property, real or personal, tangible or intangible connected with or used in the operation of the railroad including real estate contiguous to railroad right of way or station grounds held for reasonable expansion or future development.

* * *

(d) “Non-carrier real estate” means all land, and improvements on that land, not situated on the right of way of the railroad and not used as operating property within the meaning of the definition in paragraph (b). Improvements owned by others and situated on the right of way not used in the operations of the railroad shall be deemed to be “non-carrier real estate.” The Department shall adopt proper rules and regulations to determine whether any property is “non-carrier real estate.” 35 ILCS 200/11-70(b), (d)

Union Pacific argues that notwithstanding the use of the property, the fact that the subject property is owned by the railroad and is located on its right of way is conclusive as to its proper classification and assessment as “operating property.” See Chicago & A. R. Co. v. People ex rel. Coley, 129 Ill. 571 (1889); Chicago and Alton Railroad Company v. People, 98 Ill. 350 (1881). Union Pacific also argues that the property qualifies as operating property because of its use; the subject property is “connected with or used in the operation of the railroad.” 35 ILCS 200/11-70(b).

In Chicago and Alton Railroad Company, *supra*, the court held that the term “right of way” is not confined to the land over which the main track of the railroad is constructed. *Id.* at 354. Land that is held and used by a railroad company for side tracks, switches and turnouts must be regarded as a part of the right of way. *Id.* The property in that case consisted of 32 acres that were covered by tracks used “for the purpose of running cars and engines over them, and for switching cars, making up trains, loading and unloading cars, and for various other purposes in the transaction of the company’s business.” *Id.* at 355. The property was “also used for car shops, machine shops, blacksmith shops, foundry, round house, freight depot, stock yards, paint shops, etc.” *Id.* The court held that the property was used for the purpose of operating the railroad, and notwithstanding the buildings on the property, the property was held as the railroad’s

“right of way.” *Id.* In Chicago & A. R. Co., *supra*, the court found that a side track leading to a stone quarry should be considered a railroad track because the quarried rock was brought in on the track and used to ballast the railroad; the track was constructed for the sole purpose of providing material to keep the road-bed in proper repair.

Similarly, the subject property in the present case falls within the definition of operating property. The property is located on the railroad’s right of way and is used in the operation of the railroad. It has four sets of railroad tracks running through the center, and the auto facility located on the property is used to temporarily store motor vehicles that are loaded onto or unloaded from the railcars in order to transport the vehicles to various destinations. The typical dwell time for vehicles at the facility is approximately 3 days. Caliber assists Union Pacific by providing personnel to switch railroad cars into and out of the facility, to load and unload the vehicles from railroad cars, and to perform related administrative services. The property is actually used in the operation of the railroad’s business, and it, therefore, qualifies as operating property.

Recommendation:

For the foregoing reasons, it is recommended that the Motion to Dismiss, or in the alternative, for Summary Judgment, be granted.

Linda Olivero
Administrative Law Judge

Enter: August 17, 2009