

PT 96-30
Tax Type: PROPERTY TAX
Issue: Government Ownership/Use

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

CITY of CHICAGO,)		
APPLICANT	)	DOCKET #s:	91-16-1191
	)		91-16-1197
)		
v.	)	Real Estate Exemptions for	
	)	1991 Tax Year	
DEPARTMENT OF REVENUE	)	P.I.N.S:	25-04-109-005
STATE OF ILLINOIS	)		20-33-124-001
	)		20-33-124-002
	)		20-33-119-008
	)		24-33-119-024
)		
	)	Alan I. Marcus,	
	)	Administrative Law Judge	

RECOMMENDATION FOR DISPOSITION

APPEARANCE:

Mr. Jory Wishnoff, Senior Attorney-Supervisor, Department of Law, appeared on behalf of the City of Chicago.

SYNOPSIS:

These matters come on for hearing pursuant to The City of Chicago's (hereinafter referred to as "applicant") protests of the Illinois Department of Revenue's, (herein referred to as the "Department"), denials of applicant's applications for exemption from real estate taxes pursuant to Ill. Rev. Stat. ch. 120 par. 500 *et seq.*¹ These proceedings raise the issues of whether the above-captioned parcels qualify for exemptions as "propert[ies] of [a]

¹In *People ex rel Bracher v. Salvation Army*, 305 Ill. 545 (1922), the Illinois Supreme Court held that the issue of property tax exemption will depend on the statutory provisions in force at the time for which the exemption is claimed. This applicant seeks exemption from 1991 real estate taxes. Therefore, the applicable statutory provisions are those contained in the Revenue Act of 1939 (Ill. Rev. Stat. ch. 120 par. 482 *et seq.*).

political subdivision" within the meaning of Ill. Rev. Stat. ch. 120 par. 500.6. Following submission of all evidence and a careful review of the record, it is recommended that both matters be resolved in favor of the applicant.

FINDINGS OF FACT:

A. Docket Number 91-16-1191

1. This proceeding pertains to Permanent Index Number 25-04-109-005. Dept. Ex. No. 2.

2. The Department's jurisdiction over this matter and position therein are established by admission into evidence of Dept. Ex. Nos. 1, 2 and 2B.

3. The subject property is located at 8815 South Emerald, Chicago, IL. Tr. p. 9.

4. The subject property consists of a 37 x 125 vacant lot. Dept. Ex. No. 1. The parcel remained vacant during the entire 1991 assessment year. Tr. p. 15.

5. Applicant acquired the subject property via a sheriff's deed dated January 14, 1989. The deed vested applicant with fee simple title to the subject property. Applicant Ex. No. 1.

B. Docket Number 91-16-1197

1. This proceeding pertains to P.I.N. numbers 20-33-124-001, 20-33-124-002, 20-33-119-008 and 24-33-119-024. Dept. Ex. No. 2A.

2. The Department's jurisdiction over this matter and position therein are established by the admission into evidence of Dept. Ex. Nos. 1A and 2A.

3. The subject parcel is located between 83rd and South Wallace Streets in Chicago, IL. Dept. Ex. No. 1A.

4. The common address of the parcel is 600 West 83rd Street, Chicago, IL. Tr. p. 16.

5. Applicant applied for and obtained a division of the subject parcel in 1987. As a result of this division, which was in effect throughout the 1991 assessment year, that portion of the subject parcel identified by Permanent

Index Number 20-33-119-008 was re-identified as Permanent Index Number 24-33-119-024. Tr. pp. 16-18; Applicant Ex. No. 2.

6. Applicant filed a condemnation complaint on the subject property in 1982. The complaint was assigned docket number 82 L 6849. Tr. pp. 19-20; Applicant Ex. No. 3.

7. On June 18, 1986, applicant obtained an order from the Circuit Court of Cook County vesting it with fee simple title to the subject property. Applicant Ex. No. 3.

8. The order directed applicant to pay the sum of \$625,000.00 as just compensation for taking the fee simple title. *Id.*

9. Applicant paid the just compensation award in full on October 10, 1986. Applicant Ex. No. 4.

10. Applicant used the subject property as an auto pound during the entire 1991 assessment year. Tr. pp. 16-17.

CONCLUSIONS OF LAW:

On examination of the record established this applicant has demonstrated by the presentation of testimony or through exhibits or argument evidence sufficient to warrant exemptions from property taxes on both the above-captioned properties for the 1991 assessment year. Accordingly, under the reasoning given below, the determinations by the Department that the above-captioned parcels do not qualify for such exemption under Ill. Rev. Stat. ch. 120 par. 500.6 should be reversed. In support thereof, I make the following conclusions:

A. Constitutional and Statutory Considerations

Article IX, Section 6 of the Illinois Constitution of 1970 provides 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 power of the General Assembly granted by the Illinois Constitution operates as a limit on the power of the General Assembly to exempt property from taxation. 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, Inc. v. Johnson, 112 Ill. 2d 542 (1986). Furthermore, Article IX, Section 6 is not a self-executing provision. Rather, it merely grants authority to the General Assembly to confer tax exemptions within the limitations imposed by the Constitution. Locust Grove Cemetery Association of Philo v. Rose, 16 Ill. 2d 132 (1959). Moreover, 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 furtherance of its Constitutional mandate, the General Assembly enacted the Revenue Act of 1939, Ill. Rev. Stat. ch. 120 par. 428 *et seq.* Paragraph 500.6 of that statute provides, in relevant part, that "all property owned by any city or village located within the corporate limits thereof ..." shall be exempt from real estate taxation.

It is well established in Illinois that a statute exempting property or an entity from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation. People Ex Rel. Nordland v. Home for the Aged, 40 Ill.2d 91 (1968); 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).

Here, the plain meaning of the above-quoted portion of par. 500.6, coupled with the aforementioned rules of strict statutory construction, mandate that both properties remain on the tax rolls unless the applicant proves each of the following propositions by clear and convincing evidence: First, that applicant in fact owned each of the subject properties throughout the 1991 assessment year; and second, that the subject parcels were located within the corporate limits of the City of Chicago during that time.

B. Docket Number 91-16-1191

The sheriff's deed which vested the applicant with fee simple title as of January 14, 1996 clearly and convincingly establishes that applicant in fact owned the subject parcel during the 1991 assessment year. Insofar as the remaining testimonial and documentary evidence establishes that applicant retained ownership of the subject property throughout the 1991 assessment year, and that the subject parcel was in fact located within applicant's corporate limits during that time, it is my recommendation that this parcel, Permanent Index Number 25-04-109-005, be exempt from 1991 real estate taxes under Section 500.6 of the Revenue Act of 1939.

C. Docket Number 91-16-1197

Applicant's Ex. Nos. 3 and 4, together with the testimony which authenticated and explained these documents (Tr. pp. 18-22) clearly and convincingly establish that applicant obtained a fee simple interest in the subject property through its powers of eminent domain. Such evidence, coupled with the holdings in City of Chicago v. R.R. Building Corp., 24 Ill.2d 20 (1962) and Public Building Commission v. Continental Bank, 30 Ill.2d 115 (1964),

establish that applicant's interest vested as of the date of the condemnation petition and remained intact throughout the 1991 assessment year. Furthermore, inasmuch as the remaining testimony and documents established that the property, as divided, was within applicant's corporate limits throughout the 1991 assessment year, I recommend that Permanent Index Numbers 20-33-124-001, 20-33-124-002 and 24-33-119-024 be exempt from 1991 real estate taxes under Paragraph 500.6 of the Revenue Act of 1939.

WHEREFORE, for the reasons set forth above, both the aforementioned properties should be removed from the tax rolls for the 1991 assessment year.

Date

Alan I. Marcus,
Administrative Law Judge