

PT 97-25
Tax Type: PROPERTY TAX
Issue: Educational Ownership/Use

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

ALCUIN MONTESSORI)	
SCHOOL,)	Docket No: 94-16-874
APPLICANT)	
)	
v.)	Real Estate Exemption
)	for Part of 1994 Tax Year
)	
DEPARTMENT OF REVENUE)	P.I.N.: 16-07-417-029-8001
STATE OF ILLINOIS)	
)	Alan I. Marcus,
)	Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

APPEARANCE: Mr. Dean Bilton of Flanagan, Bilton & Brannigan appeared on behalf of the Alcuin Montessori School.

SYNOPSIS: This proceeding raises the limited issue of whether 7% of the subject parcel, (hereinafter referred to as the "leasehold") which the Department of Revenue (hereinafter "the Department") initially found subject to real estate taxation, should be exempt from such taxes for any part of the 1994 assessment year under 35 ILCS 200/15-35.¹ In relevant part, that provision exempts:

¹. In People ex rel Bracher v. Salvation Army, 305 Ill. 545 (1922), (hereinafter "Bracher"), 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 1994 real estate taxes. Therefore, the applicable statutory provisions are those contained in the Property Tax Code (35 ILCS 200\1-1 et seq).

All property donated by the United States for school purposes and all property of schools, not sold or leased or otherwise used with a view to profit.

The controversy arises as follows:

On December 22, 1994, Alcuin Montessori School, (hereinafter "AMS" or the "applicant") filed a real estate exemption complaint with the Cook County Board of Tax Appeals. Said complaint alleged the entire subject parcel was exempt from real estate taxation under 35 ILCS 205/19.1.²

The Board reviewed applicant's complaint and recommended to the Department that the entire property be exempted from taxation. On December 14, 1995, the Department partially accepted this recommendation by issuing a certificate exempting all but 7% of the building and underlying land.

Applicant filed a timely request for hearing as to this 7% on December 22, 1996. After holding a pre-trial conference, the Administrative Law Judge conducted an evidentiary hearing on January 15, 1997. Following submission of all evidence and a careful review of the record, it is recommended that the Department's decision be modified to reflect that 7% of the subject property and the underlying ground be exempt from real estate taxation for 41% of the 1994 assessment year.

².The exemption provisions found in Section 19.1 of the Revenue Act of 1939 (35 ILCS 205/1 *et seq.*) are, for present purposes, substantially similar to those contained Section 200/15-35 of the Property Tax Code. Nevertheless, Bracher requires that this case be adjudicated under the Property Tax Code. Therefore, I shall cite to the appropriate provisions of that statute throughout the remainder of this Recommendation.

FINDINGS OF FACT:

1. The Department's jurisdiction over this matter and its position therein, namely that 7% of the building and underlying land were not in exempt use throughout the 1994 assessment year, are established by the admission into evidence of Dept. Ex. No. 2.

2. The subject parcel is located at 301 South Ridgeland, Oak Park, IL 60302. It is identified by Permanent Index Number 16-07-417-029-8001 and improved with 4,568 square foot, tri-level building. Dept. Group Ex. No. 1, Doc. A.

3. The building features a basement (ground floor) and a first floor. Floor plans disclose that the basement contains one class room, a computer room, a kitchen, an art room, a furnace room, a crawl space, an unexcavated area, a hallway and stairs leading up to the first floor. *Id*; Applicant Ex. No. 2.

4. The floor plans further disclose that the first floor contains the following: a music room; a lounge area; an office; an all purpose room; two classrooms and a hall way. *Id*.

5. Applicant obtained its ownership interest in the subject premises via a warrantee deed dated April 14, 1967. AMS began occupying the building soon after it assumed ownership but moved to another facility in 1979. However, it reoccupied the subject premises in June of 1993 and continued occupancy thereof throughout the 1994 assessment year. Applicant Ex. No. 1-C; Tr. p. 25.

6. AMS conducted child-education programs on the subject premises during 1994. Its school was in session from

7:00 am until 6:00 pm³ Mondays through Fridays and operated on a year-round basis except for one week vacation periods in August and late December. Applicant Ex. Nos. 1-A & 1-B; Dept. Ex. No. 2; Tr. pp. 15, 23 - 25.

7. Applicant also conducted miscellaneous events, such as parent meetings, on the subject premises. It conducted only five or six of these events, which took place on Saturdays, during 1994. Tr. p. 24.

8. On June 1, 1994, AMS entered into a lease with Mara Leonard, the sole proprietor of Sound Concepts, (hereinafter "Leonard" or the "lessee"). Said lease provided, *inter alia* that:

A. The lease was to run from June 1, 1994 through May 31, 1995;

B. The lease would automatically be renewed for an additional year unless Leonard gave 60 days written notice of her intent not to renew;

C. Leonard was to pay monthly rent of \$325.00 between June 1, 1994 and August 1, 1994;

D. Her rent for the remainder of the leasehold was \$650.00 per moth;

E. Leonard was to use the south half of the music room for purposes of giving group and individual music lessons;

F. Leonard could also give lessons in the north half of the music room when it was not needed by applicant's staff for school-related purposes;

³.Classroom time actually ran from 8:30 am until 3:00 pm. However, applicant also offered pre and after school care programs which began as early as 7:00 am and ran as late as 6:00 pm. Tr. p. 15.

G. The lessons were to be given between 3:00 pm and 9:00 pm Monday through Friday and 9:00 am until noon on Saturday;

H. The lessons were not to conflict with any classroom schedules established by applicant;

I. Leonard was to pay any real estate taxes that were assessed against the leasehold as a result of her use;

Applicant Ex. No. 1-E; Tr. pp. 17 - 18.

9. Leonard gave private lessons at the times and places specified in the lease during 48 or 50 weeks of the 1994 assessment year. She also taught music classes that were part of applicant's regular curriculum, before the leasehold took effect and throughout the 1994 assessment year. Tr. pp. 23, 25.

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 exempting the leasehold from real estated taxes for 41% of the 1994 assessment year. Accordingly, under the reasoning given below, the determination by the Department that the leasehold does not satisfy the requirements for exemption set forth in 35 **ILCS** 200/15-65 should be modified. In support thereof, I make the following conclusions:

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, Illinois 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).

Pursuant to its Constitutional mandate, the General Assembly enacted the Property Tax Code 35 **ILCS** 200/1-3 *et seq.* The provisions of that statute that govern disposition of the instant proceeding are found in Section 200/15-35. In relevant part, that provision exempts the following:

All property donated by the United States for school purposes and all property of schools, not sold or *leased or otherwise used with a view to profit.*

35 **ILCS** 200/15-35 (emphasis added).

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), (hereinafter "GRI"). 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. Metropolitan Sanitary District of Greater Chicago v. Rosewell, 133 Ill. App.3d 153 (1st Dist. 1985).

An analysis of whether this applicant has met its burden of proof begins with some fundamental principles: first, that the word "exclusively," when used in Section 200/15-35 and other tax exemption statutes means "the primary purpose for which property is used and not any secondary or incidental purpose." GRI, supra; Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App.3d 186 (4th Dist. 1993). Second, that "statements of the agents of an institution and the wording of its governing documents evidencing an intention to [engage in exclusively charitable activity] do not relieve such an institution of the burden of proving that ... [it] actually and factually [engages in such activity]." Morton Temple Association v. Department of Revenue, 158 Ill. App. 3d 794, 796 (3rd Dist. 1987). Therefore, "it is necessary to analyze the activities of the [applicant] in order to determine whether it is an [exempt] organization as it purports to be in its charter." *Id.*

Here, administrative notice of the Department's decision dated December 14, 1995 (Dept Ex. No. 2) establishes that this applicant is a "school" within the meaning of Section 200/15-35. This decision

further establishes that AMS used all but 7% of the subject premises and underlying land for exempt purposes during the entire 1994 assessment year. Nevertheless, the plain meaning of Section 200/15-35 expressly bars exemption of the leasehold unless that portion of the premises was not "leased or otherwise used with a view to profit."

In People ex. rel. Baldwin v. Jessamine Withers Home, 312 Ill. 136 (1924) (hereinafter "Baldwin"), the Illinois Supreme court established the well-settled principle that "[i]f real estate is leased for rent, whether in cash or other form of consideration, it is used for profit." Baldwin at 140. Thus, "[w]hile the application of income to [exempt] purposes aids the [school], the primary use of [the parcel in question] is for [non-exempt] profit". *Id.* See also, Salvation Army v. Department of Revenue, 170 Ill. App.3d 336, 344 (2nd Dist. 1988). However, our courts have also adhered to the equally well-established principle that "[w]here a tract is used for two purposes, there is nothing novel in exempting the part used for an exempt purpose and subjecting the remainder to taxation." Illinois Institute of Technology v. Skinner, 49 Ill.2d 59, 64 (1971). (hereinafter "IIT").

The instant record discloses that the leasehold is primarily used for purposes which do not qualify as exempt under the Baldwin holding. Consequently, such inherently profit-making and commercial uses violate the statutory proscriptions on leasing and use for profit contained in Section 200/15-35. As such, the Department's decision is consistent with IIT because it limits taxation of the subject parcel to that portion which is not in exempt use. However,

because this non-exempt use did not begin until June 1, 1994, I conclude that the Department's decision should be modified to reflect that 7% of the subject property and its underlying ground should be exempt from real estate taxation for 41% of the 1994 assessment year. See, 35 ILCS 200/9-185.⁴

In light of the above conclusion, I find it unnecessary to engage in extensive analysis of applicant's contention that the leasehold should be completely exempted because it constitutes a fractional amount of the subject property's building space. This argument fails to recognize that the above modification has taken square footage into account by exempting all portions of the subject property that are not subject to the lease. Moreover, applicant's argument misstates the applicable legal standard, which emphasizes actual use rather than square footage. See, Skil Corporation v. Korzen, 32 Ill.2d 249 (1965); Comprehensive Training and Development

⁴.The relevant portion of that provision states as follows:

The purchaser of property on January 1 shall be considered the owner [who is therefore liable for any taxes due] on that day. However, when a fee simple title or lesser interest in property is purchased, granted, taken or otherwise transferred for a use exempt from taxation under this Code, that property shall be exempt from the date of the right of possession, except that property acquired by condemnation is exempt as of the date the condemnation petition is filed. Whenever a fee simple title or lesser interest in property is purchased, granted taken or otherwise transferred from a use exempt from taxation under this Code to a use not so exempt, that property shall be subject to taxation from the date of the purchase or conveyance.

35 ILCS 200/9-185.

Corporation v. County of Jackson, 261 Ill. App.3d 37 (5th Dist. 1994). Thus, while one may plausibly interpret IIT as imposing some form of square footage requirement, and find such a standard desirable from an assessment standpoint, fundamental principles of exemption law dictate that mechanical square footage computations cannot supplant the accent on actual use. Consequently, applicant's argument must fail.

AMS also posits that the leasehold should be entirely exempt because Leonard's use was incidental to that of the applicant. This argument draws support from the fact that Leonard used the leasehold for private lessons at times when applicant's school was not in session. While it is true that incidental uses generally do not destroy exemption, (GRI, *supra*), Leonard's use of the leasehold was one which both the plain language of Section 200/15-35 and the Baldwin holding declare to be non-exempt. Therefore, completely exempting the leasehold would effectively defeat an otherwise clear legislative mandate and overturn fundamental tenets of exemption law. Therefore, the Department's decision should be modified as set forth above.

WHEREFORE, for all the above-stated reasons, it is my recommendation that 7% of the subject property and the land thereunder (or the entire leasehold) be exempt from real estate taxes for 41% of the 1994 assessment year.

Date

Alan I. Marcus,
Administrative Law Judge