

PT 18-04
Tax Type: Property Tax
Tax Issue: Government Ownership/Use

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

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

v.

VILLAGE OF ST. DAVID

Applicant

Docket # 16-PT-010
Tax Year 2015

Dept. Docket # 15-29-10

RECOMMENDATION FOR DISPOSITION

Appearances: Robin Gill, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Andrew W. Johnson of Johnson & Johnson, P.C. for Village of St. David

Synopsis:

Village of St. David (“applicant”) filed an application for a property tax exemption for the year 2015 for a parcel of property located in Fulton County. The applicant seeks an exemption pursuant to section 15-75 of the Property Tax Code (“Code”) (35 ILCS 200/1-1 *et seq.*) on the basis that the property is owned by a municipal corporation and used exclusively for public purposes. The Fulton County Board of Review recommended that the property be exempt, but the Department determined that the request for an exemption should be denied because the property did

not meet either the ownership or use requirement. The applicant timely protested the Department's decision. The parties waived their right to an evidentiary hearing and asked that the matter be resolved based on the stipulated facts and the attached exhibits. Both parties filed briefs in support of their positions. In its brief, the Department agreed that the property is owned by a municipal corporation. The only remaining issue is whether the property is used exclusively for public purposes. After reviewing the record, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. On December 21, 2010, the applicant acquired the property in question, 613 Grand Avenue in St. David, Illinois, via a Sheriff's Judicial Deed. The litigation involved an unsafe and dangerous buildings action that resulted in the demolition of a garage but left the shell of a single-family home. (App. Ex. #4C-1; #4-J)
2. The property was marketed with the requirement that the remaining structure either be demolished or repaired. (App. Ex. #4C-1)
3. On August 16, 2011, the applicant executed a Quit-Claim Deed to Andrew Stuckey that contained 5 paragraphs of requirements to either bring the property into compliance or demolish it. The Quit-Claim Deed indicated that the failure to comply with the conditions shall result in a reversion of title to the grantor. (App. Ex. #4C-1; #10-8)
4. Mr. Stuckey did not comply with the 5 paragraphs of the deed. (App. Ex. #4C-1)
5. On May 14, 2013, the applicant executed an Affidavit of Reversion that was recorded on the Land Records of Fulton County. (App. Ex. #4C-1; #4E)

6. According to an Affidavit of Use signed by the applicant's president on February 2, 2016, "[t]he house located upon the premises was demolished and the real estate is open and vacant, and has been maintained by the [applicant] since 2013 as vacant greenspace. Efforts were made to sell the premises for improvement, but no suitable offer was received and acted upon." (App. Ex. #4C-1, ¶6)
7. According to the Affidavit of Use, the applicant "currently uses such lot for greenspace complementing the neighborhood and plans to improve and maintain such property as a municipal park." The affiant further stated that "[t]he aforementioned use has been ongoing since the acquisition of such property." (App. Ex. #4C-2, ¶8, 9)
8. On January 4, 2016, the applicant's Board of Trustees voted to designate and maintain the property as a public park. (App. Ex. #4C-2, ¶7)
9. On March 7, 2016, the applicant passed an Ordinance designating the property as a public park and indicating that the property shall be maintained as a public park. The Ordinance states that the public works department shall maintain the property as a public park and may erect signage reflecting the designation. (App. Ex. #6)

CONCLUSIONS OF LAW:

It is well-established under Illinois law that taxation is the rule, and tax exemption is the exception. Eden Retirement Center, Inc. v. Department of Revenue, 213 Ill. 2d 273, 285 (2004). "[A]ll property is subject to taxation, unless exempt by statute, in conformity with the constitutional provisions relating thereto." *Id.* Statutes granting tax

exemptions must be strictly construed in favor of taxation. *Id.* at 288; Chicago Patrolmen’s Association v. Department of Revenue, 171 Ill. 2d 263, 271 (1996); People ex rel. County Collector v. Hopedale Medical Foundation, 46 Ill. 2d 450, 462 (1970). All facts are to be construed and all debatable questions resolved in favor of taxation. Eden Retirement Center, Inc., at 289. Every presumption is against the intention of the State to exempt the property from taxation. Oasis, Midwest Center for Human Potential v. Rosewell, 55 Ill. App. 3d 851, 856 (1st Dist. 1977). Whenever doubt arises, it must be resolved in favor of requiring the tax to be paid. Quad Cities Open, Inc. v. City of Silvis, 208 Ill. 2d 498, 508 (2004).

The burden of proof is on the party who seeks to qualify its property for an exemption. Eden Retirement Center, Inc., *supra*; Chicago Patrolmen’s Association, *supra*. “The burden is a very heavy one.” Provena Covenant Medical Center v. Department of Revenue, 236 Ill. 2d 368, 388 (2010) (“Provena I”); see also Oasis, Midwest Center for Human Potential, *supra*. The party claiming the exemption bears the burden of proving by clear and convincing evidence that the property in question falls within both the constitutional authorization and the terms of the statute under which the exemption is claimed. Eden Retirement Center, Inc., *supra*; Board of Certified Safety Professionals of the Americas, Inc. v. Johnson, 112 Ill. 2d 542, 547 (1986) (citing Coyne Electrical School v. Paschen, 12 Ill. 2d 387, 390 (1957)).

Authority to grant property tax exemptions emanates from article IX, section 6 of the Illinois Constitution of 1970. Section 6 authorizes the General Assembly to exempt certain property from taxes and provides, in part, 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. Ill. Const. 1970, art. IX, §6.

The constitution does not require the legislature to exempt property from taxation; an exemption exists only when the legislature chooses to create one by enacting a law. Eden Retirement Center, Inc., at 290. “The legislature cannot add to or broaden the exemptions that section 6 of article IX specifies.” *Id.* at 286. By enacting an exemption statute, the legislature may place restrictions, limitations, and conditions on an exemption, but the legislature cannot make the exemption broader than the provisions of the constitution. *Id.* at 291.

Pursuant to this constitutional authority, the General Assembly enacted section 15-75 of the Property Tax Code (35 ILCS 200/1-1 *et seq.*), which allows exemptions for property owned by municipal corporations and used for public purposes and provides as follows:

Municipal corporations. All market houses, public squares and other public grounds owned by a municipal corporation and used exclusively for public purposes are exempt. 35 ILCS 200/15-75.

Whether property is “exclusively” used for public purposes depends on the primary use of the property. Metropolitan Water Reclamation District of Greater Chicago v. Department of Revenue, 313 Ill. App. 3d 469, 475 (1st Dist. 2000). If the primary use of the property is for public purposes and any private use is merely incidental, then the property is “exclusively” used for public purposes. *Id.*

The Department argues that the property in this case was not exclusively used for public purposes during the year at issue, 2015. The Department points out that in Metropolitan Water Reclamation District, *supra*, the court stated that if a municipal

corporation presents evidence that it intends to use property for public purposes in the future, this is not sufficient for the property to be exempt. The municipal corporation must demonstrate that it actually used the property primarily for public purposes during the tax year in question. Metropolitan Water Reclamation District, *supra*.

The Department claims that based on the Affidavit of Use, the applicant took possession of the property in May of 2013, and since that date, the house that was on the property was demolished. Subsequently, the property was used as vacant greenspace. The property was unsuccessfully offered for sale during this time period. In 2016, which is the year after the year at issue, the property was dedicated as a public park. The Department notes that the record does not contain any other information regarding the use of the property; the record only indicates that the property was held as greenspace and offered for sale. The Department argues that based on this evidence, the applicant has failed to prove clearly and convincingly that the property was used for public purposes during 2015.

In response, the applicant argues that the use of the property as vacant greenspace within a residential neighborhood constitutes use for public purposes. The applicant asserts that greenspace is a common feature of parks. The applicant believes that the Department has mischaracterized the evidence by stating that “the only activity on the parcel was the demolition of a house, the unsuccessful attempt to sell the property and the holding of the property as green space.” (Dept. brief, p. 4) In the applicant’s view, the un-contradicted evidence is not that the applicant passively held the land for future development. The applicant contends that it actively *maintained* the property for public use and did so throughout 2015. The applicant also states that there was no use by a

private party or other entity, thereby precluding a finding that the property was not used exclusively for public purposes.

The taxpayer argues that the case of Metropolitan Water Reclamation District, *supra*, is distinguishable because the property in that case was leased to private entities, and the court found that the property was primarily used for private commercial purposes. The taxpayer refers to Metropolitan Sanitary District of Greater Chicago v. Rosewell, 133 Ill. App. 3d 153, 155-156 (1st 1985), where the property contained ditches, pipes and drains and was leased to a private party. The court found that the property was exempt even though it was also vacant and unimproved. The applicant claims that in the present case, there is no evidence of a lease of the property or any non-public use of the property during 2015.

In order for the property to be exempt for 2015, the property must have been actually used for public purposes. In the case of Skil Corporation v. Korzen, 32 Ill. 2d 249 (1965), the Supreme Court stated that evidence that property was acquired for an exempt purpose did not eliminate the need for proof of actual use for that purpose. “Intention to use is not the equivalent of use.” Skil at 252. See also Antioch Missionary Baptist Church v. Rosewell, 119 Ill. App. 3d 981 (1st Dist. 1983) (newly acquired property that remained vacant was not actually used for exempt purpose and not entitled to the exemption).

In the present case, the property is vacant greenspace. The applicant correctly states that greenspace is a common feature of parks, but a distinction must be made between greenspace that is actually used as a public park (which would be exempt) and greenspace that is not used at all (which would not be exempt). The evidence presented

by the applicant indicates that during 2015 the property falls under the second category, vacant greenspace that was not used at all.

The Affidavit of Use indicates that after the house was demolished, the applicant tried to sell the property. It is not clear when the applicant stopped its selling efforts, but the affidavit was signed on February 2, 2016 and indicates that the applicant “currently uses such lot for greenspace complementing the neighborhood and plans to improve and maintain such property as a municipal park.” The only conclusion that can be drawn from this statement is that during 2015 the property was not actually used as a park. The Ordinance designating the property as a park was not passed until March 7, 2016, and during 2015 the property was not actually used as a public park.

Although the applicant maintained the property during the year in question, it was not maintained “for public use” as the applicant claims. There is no indication that anyone actually used the property. It was maintained because it is an empty lot in a residential neighborhood where lots generally must be maintained. According to the Ordinance, signs may be put on the property designating it as a public park, but until that happened, it is not clear that anyone was aware that they could use the property as a park.

The case cited by the applicant, Metropolitan Sanitary District of Greater Chicago, supra, is distinguishable because although the property in that case was vacant and unimproved, the municipal corporation used the property for drainage functions (the property was crossed by numerous drainage ditches, pipes, drains, and other utilities), and the property was also used as a right-of-way for an adjacent channel. In the present case, other than maintaining the property, the applicant did not actually use the property for any public purpose during 2015. The applicant bears the burden of presenting proof of

actual use for an exempt purpose. The applicant's evidence does not meet the clear and convincing standard to show that the property was used for public purposes during 2015.

Recommendation:

For the foregoing reasons, it is recommended that the applicant's request for an exemption be denied.

Linda Olivero
Administrative Law Judge

Enter: September 29, 2017