

PT 16-09  
Tax Type: Property Tax  
Tax Issue: Charitable Ownership/Use

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

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**THE DEPARTMENT OF REVENUE  
OF THE STATE OF ILLINOIS,  
APPLICANT**

v.

**THE CONSERVATION FOUNDATION,  
APPLICANT**

**No. 15-PT-009 (14-22-119)  
Real Estate Tax Exemption  
For 2014 Tax Year  
P.I.N. 05-26-403-006**

**DuPage County Parcel  
Kenneth J. Galvin  
Administrative Law Judge**

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**ORDER ON THE CONSERVATION FOUNDATION'S MOTION FOR SUMMARY  
JUDGMENT AND THE DEPARTMENT OF REVENUE'S CROSS-MOTION FOR  
SUMMARY JUDGMENT**

**APPEARANCES:** Ms. Rachel Robert, Day & Robert, on behalf of The Conservation Foundation; Ms. Paula Hunter, Special Assistant Attorney General, on behalf of The Department of Revenue of the State of Illinois.

**SYNOPSIS:**

This proceeding raises the issue of whether property leased for park district use (hereinafter the "subject property"), qualifies for exemption from 2014 real estate taxes under 35 ILCS 200/15-65, which exempts all property of charitable organizations used for charitable purposes and not leased or otherwise used with a view to profit or under 35 ILCS 200/15-105(b), which exempts all property belonging to a park or conservation district and all property leased to a park district for \$1 or less per year and used exclusively as open space for recreational purposes and not exceeding 50 acres.

The controversy arises as follows: On January 20, 2015, The Conservation Foundation (hereinafter "TCF") filed a Real Estate Exemption Complaint with the Board of Review of DuPage County. The Board of Review recommended a "partial year exemption" beginning June

12, 2014, the date of TCF's ownership of the subject property. On February 11, 2015, the Department of Revenue of the State of Illinois (hereinafter the "Department") denied TCF's request for a property tax exemption finding that the "property is not in exempt use." On April 8, 2015, TCF protested the denial of the exemption.

On November 23, 2015, TCF and the Department submitted an "Agreed Stipulation of Material Facts," ("Stip.") in lieu of an evidentiary hearing, and requested a briefing schedule. On February 1, 2015, TCF filed a Motion for Summary Judgment and the Department filed a Cross-Motion for Summary Judgment. On February 16, 2016, TCF and the Department each filed a "Response." Following a careful review of the record, it is recommended that the Department's Cross-Motion for Summary Judgment be granted and the Department's denial of

the exemption for DuPage County Property Index Number 05-26-403-006, for the 2014 assessment year, be affirmed.

**STIPULATION OF FACTS:<sup>1</sup>**

1. The Parties stipulate that the property at issue in this Appeal consists of 2.24 acres of vacant land located at 22W030 Butterfield Road, Glen Ellyn, DuPage County, Illinois 60137, permanent index number 05-26-403-006 ("subject property").
2. The Parties stipulate to the authenticity and veracity of the following ten documents which were submitted in support of the Appeal and Application for Hearing Pursuant to 35 ILCS 200/8-35(b) filed by TCF with IDOR on April 8, 2015:
  - a. Articles of Incorporation for TCF;
  - b. By-Laws for TCF;
  - c. April 2, 2015 Certificate in Good Standing for TCF;

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<sup>1</sup> This Stipulation of Facts is a verbatim recitation of the Stipulation submitted by the parties on November 23, 2015.

- d. IDOR and IRS Qualification Letters for TCF;
- e. Lease/Purchase Agreement between TCF and the Butterfield Park District on the Subject Property;
- f. Warranty Deed dated June 12, 2014 conveying the Subject Property to TCF;
- g. DuPage County Board of Review January 14, 2015 decision recommending an exemption be granted to TCF on the Subject Property;
- h. IDOR denial of exemption to TCF on the Subject Property dated February 11, 2015;
- i. Photographs of the Subject Property;
- j. Financials for TCF for the year ending June, 2013.

True and accurate copies of the ten documents are incorporated herein as **Group Exhibit A (1-10)** to this Agreed Stipulation of Material Facts.

- 3. Addressing the content of the four page text of the Appeal and Application for Hearing Pursuant to 35 ILCS 200/8-35(b) filed by TCF with IDOR on April 8, 2015 (exclusive of the exhibits included within Group Exhibit A), IDOR stipulates that if TCF were to call witnesses at a hearing in this matter, the witnesses would render the following testimony:

- a. TCF's primary organizational purposes include protecting stewardship of the environment through the preservation, protection and enhancement of land in its natural, scenic and open space condition.
- b. The subject property was acquired by TCF on June 12, 2014 under what is known as TCF's "buy and hold" program. Under the program, TCF

assists local governmental open space institutions (park districts, forest preserves or other governmental land preservation entities) – in this case, the Butterfield Park District (“Park District”) – by undertaking the initial acquisition of real estate when the governmental institution does not yet have the funds lined up to make the purchase. TCF then “holds” and maintains ownership of the real estate while immediately and simultaneously leasing it to that same governmental institution for a defined lease term during which time the governmental entity secures the funds needed to purchase the real estate back, be it by donation, grant, referendum or otherwise. The lease entitles the public agency to immediate access, use and management of the real estate. The monthly lease payment made to TCF under the program is not calculated to generate a profit to TCF. The lease payment is designed only to cover the anticipated expenses incurred by TCF to facilitate the transaction and to also cover those operational and program costs incurred and anticipated until the open space agency can complete the purchase from TCF.

- c. In this case, TCF was approached by the Park District to facilitate acquisition of the subject property through the buy and hold program, as the subject property was targeted for acquisition by the Park District because it lies adjacent to existing Park District property which contains public recreational facilities and the Park District’s main office. TCF acquired the property for \$1.5 million, and the \$1.5 million purchase price

was financed through TCF contributing \$150,000 from its own reserve funds and TCF securing a \$1.350 million loan from Itasca Bank & Trust.

- d. Under TCF's Lease/Purchase Agreement with the Park District, the Park District commenced its two year lease of the Subject Property on June 12, 2014, the same day it was acquired by TCF. The use and purpose specified under the Lease/Purchase Agreement was to "promote preservation of the property in conjunction with public recreation." The monthly lease payment of \$6,000 was expressly designed to cover TCF's initial acquisition costs, the cost of money and loan carry costs, along with the operational and program expenses incurred and projected over the course of the two year lease term. Upon expiration of the lease term (or sooner), the subject property will be purchased back by the Park District from TCF for the exact same \$1.5 million purchase price initially paid by TCF.
- e. The Park District, as lessee, is leasing the subject property for a tax exempt park district use and activity: To promote preservation of the subject property in conjunction with public recreation. This is the primary and exclusive use of the subject property.
- f. Upon the Park District purchasing the subject property back from TCF, the subject property will be exempt from real estate taxes as "park district owned" property under 35 ILCS 200/15-105(b).
- g. The buy and hold transaction under which TCF purchased, is leasing and will flip the property back to the Park District is in no way intended to be,

nor is it, a profit-making endeavor or venture for TCF. Rather, it is a specifically designed program to foster the organizational purposes of both TCF and the Park District by preserving and providing open space for use by the public, while ensuring that TCF's out-of-pocket costs, along with the associated operational, program and monitoring expenses incurred and projected for the transaction, are covered.

4. The Parties stipulate that TCF is a privately supported, tax exempt, non-profit organization qualified under Sections 501(c)(3) and 170(h) of the Internal Revenue Code of 1986, as amended, and the regulations issued thereunder.
5. The Parties stipulate that TCF is an Illinois not-for-profit organization and is organized and operated exclusively for charitable purposes (see Exhibit A(4)). As a result, all property owned by TCF and not subject to a lease is exempt from real estate taxation pursuant to 35 ILCS 200/15-65.
6. The Parties stipulate that the Park District is an Illinois park district and municipal corporation organized and existing under the Park District Code, 70 ILCS 1205/1-1, *et seq.*
7. The Parties stipulate that if the Park District were the owner of the subject property at the time the exemption was filed and the subject property was being used for the same purposes set forth in the Lease/Purchase Agreement, the subject property would be exempt from real estate taxes as "park district" owned property under 35 ILCS 200/15-105(b).
8. The Parties stipulate that the subject property was acquired by TCF on June 12, 2014.

9. The Parties stipulate that a true and accurate copy of the Lease/Purchase Agreement between TCF and the Park District is attached to the Stipulation as Exhibit A (5).
10. The Parties stipulate that the initial application for exemption filed by TCF was filed with DuPage County Board of Review on December 23, 2014 and sought an exemption for the subject property as of June 12, 2014 under 35 ILCS 200/15-65. On January 14, 2015, the DuPage County Board of Review recommended approval of the exemption as of June 12, 2014. Exhibit A (7).
11. The Parties stipulate that on February 11, 2015, IDOR denied the exemption for the following reason: “The property is not an exempt use.” Exhibit A (8).
12. The Parties stipulate that the only dispute between the Parties is a pure question of law as to which statutory provision governs the exemption sought by TCF in this matter, and there are no material facts in dispute between the Parties.
13. The Parties stipulate that TCF has, and continues to assert, that the exemption and underlying transaction are governed by 35 ILCS 200/15-65 which became effective on August 16, 2001, and provides in pertinent part:

Sec. 15-65. Charitable purposes. All property of  
the following is exempt when actually and  
exclusively used for charitable or beneficent  
purposes, and not leased or other used with a view  
to profit:

\* \* \*

If a not-for-profit organization leases property that is otherwise exempt under this subsection to an organization that conducts an activity on the leased premises that would entitle the lessee to an exemption from real estate taxes if the lessee were the owner of the property, then the leased property is exempt.

14. The Parties stipulate IDOR asserts that the exemption and underlying transaction are governed by 35 ILCS 200/15-105(b), which provides in relevant part:

(b) All property belonging to any park or conservation district with less than two million inhabitants is exempt. All property leased to such park district for \$1 or less per year and used exclusively as open space for recreational purposes not exceeding 50 acres and the aggregate for each district is exempt.

15. The Parties stipulate that the only reported decision interpreting the statutory provision IDOR seeks to apply is found in Salt Creek Rural Park District v. Department of Revenue, 334 Ill.App. 67, 777 N.E.2d 515 (1<sup>st</sup> Dist. 2002). This case involved a tax exemption sought for the year 1996, roughly five years before the statutory provision relied upon by TCF came into effect on August 16, 2001.
16. The Parties stipulate that true and accurate excerpts of legislative history underlying the addition and amendment of the exemption language relied upon by

TCF in this matter into 35 ILCS 200/15-65 were attached to the Stipulation as Exhibit B.

**CONCLUSIONS OF LAW:**

An examination of the record establishes that TCF has not demonstrated, by the presentation of testimony, exhibits and argument, evidence sufficient to warrant exempting the subject property from property taxes for the 2014 assessment year. 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 (1<sup>st</sup> Dist. 1983). Consequently, there is a presumption that no exemption is intended. Rotary International v. Paschen, 14 Ill. 2d 480 (1958). Furthermore, the party claiming the exemption has the burden of showing that the property clearly falls within the

statutory exemption. People ex rel. Nordlund v. Home for the Aged, 40 Ill. 2d 91 (1968). Additionally, the exemption provisions must be strictly construed against exemption.

Methodist Old Peoples Home v. Korzen, 39 Ill. 2d 149 (1968).

In accordance with its constitutional authority, the General Assembly enacted sections 200/15-105 and 200/15-65 of the Property Tax Code. Section 15-105, entitled “Parks and Conservation Districts,” subsection (b), exempts all property belonging to any park or conservation district and all property leased to such park district for \$1 or less per year. The property at issue in this case is owned by TCF which leases the property to Butterfield Park District for rent of \$6,000/month or \$72,000/year, far exceeding the \$1/year rent allowed by the statute. Clearly the subject property does not meet the requirements for exemption under section 15-105(b).

TCF applied for exemption for the subject property under 35 ILCS 200/15-65 entitled “Charitable Purposes,” and specifically subsection (c) which states that if a not-for-profit organization leases property **that is otherwise exempt under this subsection** to an organization that conducts an activity on the leased premises that would entitle the lessee to an exemption from real estate taxes if the lessee were the owner of the property, then the leased property is exempt (emphasis added). TCF argues that it is a not-for-profit organization leasing property to an organization that conducts an activity that would entitle the lessee to an exemption if it owned the property.

But TCF ignores the phrase in 35 ILCS 200/15-65 that requires that the leased property be “otherwise exempt under this subsection.” The leased property is not “otherwise exempt” under 35 ILCS 200/15-65. The leased property does not constitute charitable use of property. It is park district use of property. The Butterfield Park District, as lessee, is leasing the subject

property for park district use and activity as stated in the Stipulation: “To promote preservation of the subject property in conjunction with public recreation. This is the primary and exclusive use of the subject property.” Stip. No. 3(e). If park district use of property was synonymous with charitable use of property, there would be no need for the existence of section 15-105, which provides a separate exemption for park district use of property. The record of this case does not allow me to conclude that the subject property is used for charitable purposes, such that it would qualify as “otherwise exempt under this subsection.”

Furthermore, it is not necessary to look at the legislative history of this statute in order to determine the intent of the legislature. The phrase “otherwise exempt under this subsection” could not be clearer. Where the language of a statute is clear and unambiguous, a court must give it effect without resort to tools of statutory construction. Exelon Corporation v. Department of Revenue, 234 Ill. 2d 266 (2009). The effect of the phrase is to limit property exempt under the subsection to property used for charitable purposes.

WHEREFORE, for the reasons stated above, I recommend that 1) TCF’s Motion for Summary Judgment be denied; 2) the Department’s Cross-Motion for Summary Judgment be granted and 3) the Department’s February 11, 2015 determination which denied exemption for DuPage County Parcel, P.I.N. 05-26-403-006 should be affirmed and the subject property should not be exempt from property taxes for the 2014 assessment year.

July 20, 2016

Kenneth J. Galvin  
Administrative Law Judge