

**PT 04-12**  
**Tax Type: Property Tax**  
**Issue: Charitable Ownership/Use**

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

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**USX CORPORATION,**  
**APPLICANT**

**v.**

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

**Nos: 03-PT-0008**  
**(01-16-2997)**  
**PINS: 21-32-100-002 (part of), et al.**  
**(See Appendix I and Attached Legal Descriptions)**

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**RECOMMENDATION FOR DISPOSITION**

**APPEARANCES:** Mr. Thomas E. Brannigan of Smith, Hemmesch, Burke & Brannigan on behalf of USX Corporation (the “Applicant” or “USX”); Mr. Shepard Smith, Special Assistant Attorney General, on behalf of the Illinois Department of Revenue (the “Department”).

**SYNOPSIS:** This matter raises the issue of whether real estate that is identified by parts of the Cook County Parcel Numbers that appear in the attached Appendix I and the legal descriptions that are attached thereto (collectively referred to as the “subject properties”) qualify for exemption from 2001 real estate taxes under Sections 15-60, 15-75 and/or 15-80 of the Property Tax Code, 35 ILCS 200/1-1, *et seq.* The underlying controversy arises as follows:

The sole applicant in this matter, USX Corporation, filed a Real Estate Tax Exemption Complaint with the Cook County Board of Review, which reviewed the Complaint and recommended that the requested exemption be denied on grounds that, pursuant to Wheaton College v. Department of Revenue, 155 Ill. App.3d 945, 947-948

(2<sup>nd</sup> Dist. 1987), the “non-exempt applicant would benefit from [the] tax advantages of the exemption.” Dept. Ex. No. 2.

On November 21, 2002, the Department issued its initial determination in this matter, denying the requested exemption on grounds that the subject properties are not in exempt ownership and not in exempt use. Dept. Ex. No. 1.

USX subsequently filed a timely appeal to this determination and later presented evidence at a formal evidentiary hearing, at which the Department also appeared. Following a careful review of the record made at hearing, I recommend that the Department’s initial determination in this matter be affirmed.

**FINDINGS OF FACT:**

1. The Department’s jurisdiction over this matter and its position herein are established by the admission of Dept. Ex. Nos. 1, 2 and 3.
2. The Department’s position in this matter is that the subject properties are not in exempt ownership and not in exempt use. Dept. Ex. No. 1.
3. The sole applicant in this matter, USX Corporation, is a Delaware for-profit corporation that is authorized to do business in the State of Illinois. Dept. Ex. Nos. 2, 3; Applicant Ex. No. 5.
4. The subject properties are identified by the Parcel Index Numbers that appear on the attached Appendix I and the legal descriptions that are attached hereto. Dept. Ex. Nos. 2, 3; Applicant Ex. No. 5.
5. The subject properties are located in Chicago, IL and form a 108.07 acre tract of land that had formerly been part of the USX South Works steel mill facility. Dept. Ex. No. 2; Tr. pp. 19-20.

6. USX ceased all of its steel-making operations at the South Works steel mill facility in 1992. Tr. p. 19.
7. USX was the fee owner of all the subject properties throughout the tax year currently in question, 2001. Dept. Ex. No. 2; Applicant Ex. No. 5.
8. On June 28, 2001, USX entered into an Installment Sales Agreement (the “Agreement”) with the City of Chicago (the “City”) which, in substance, called for USX to convey, on a piecemeal basis, all of the subject properties to the City.<sup>1</sup> Applicant Ex. No. 5.
9. The timing of each conveyance is to be accomplished according to a certain schedule of events that is set forth in the Agreement. *Id.*
10. All of the events detailed in this schedule related to the construction of certain public works improvements that were to be completed in tax years subsequent to 2001. *Id.*
11. The Agreement further provides, in relevant part, that:
  - A. The City is entering into the Agreement for the purpose of acquiring the subject properties in order to include them within a larger redevelopment project that it is undertaking in the South Chicago neighborhood of the City;
  - B. USX is to convey the subject properties to the applicant in strict accordance with the procedures set forth in the Agreement;
  - C. Prior to the point in time that it completes all of the conveyances called for in the Agreement, USX shall not do any of the following without first obtaining prior written consent from the City:

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1. The rights and duties of each of the parties to this Agreement were more fully detailed in a separate “Land Conveyance and Use Agreement.” This “Land Conveyance and Use Agreement” is specifically referenced in the Agreement submitted as Applicant Ex. No. 5. However, the actual “Land Conveyance and Use Agreement” was not submitted into the record.

1. Sell, transfer, convey or otherwise dispose of any of the subject properties in any manner that is not specifically detailed in the Agreement;
  2. Enter into any transaction outside the normal course of its business that would impair its ability to convey such properties in accordance with the terms and conditions set forth in the Agreement; and,
  3. Encumber, alienate, convey, or otherwise affect a change in the status of the title to any or all of the subject properties prior to the dates on which it is to convey them to the City.
- D. USX specifically agrees to promptly pay, when due, any property taxes or other governmental charges levied against the subject properties;
- E. Failure to promptly pay any such tax or governmental charge when due shall constitute a material default of USX's obligations under the Agreement;
- F. The City authorizes USX to pursue appropriate proceedings to obtain property tax exemptions for the subject properties "upon the legal theory, with which the City agrees, that the City's exclusive physical possession thereof under the terms of the [Land Conveyance and Use Agreement] and this Installment Sales Agreement renders the City, a tax exempt entity, the Equitable title holder thereto, therefore, making the [subject properties] exempt from real estate taxation[.]"

Applicant Ex. No. 5.

12. USX did not actually convey any of the subject properties to the City at any time during the 2001 assessment year. Tr. p. 40.

## **CONCLUSIONS OF LAW:**

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.

Pursuant to Constitutional authority, the General Assembly enacted Sections 15-60, 15-75 and 15-80 of the Property Tax Code, 35 **ILCS** 200/1-1 *et seq.*, which provide, in relevant part, for exemption of the following:

### **200/15-60. Taxing District Property**

§ 15-50. Taxing district property. All property belonging to any county, village or city, used exclusively for maintenance of the poor is exempt [from real estate taxation], as is all property owned by a taxing district<sup>[2]</sup> that is being held for future expansion or development, except if leased by the taxing district to lessees for use for other than public purposes.

Also exempt are:

- (a) all swamp or overflowed lands belonging to any county;
- (b) all public buildings belonging to any county, township, city or incorporated town, with the ground on which the buildings are erected;
- (c) all property owned by any city or village located within its incorporated limits;
- (d) All property owned by any city or village located outside its corporate limits but within the same county when used as a tuberculosis sanitarium, farm colony in connection with a house of correction, or nursery, garden, or farm, for the growing of shrubs, trees, flowers, vegetables, and plants for use in

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2. Section 1-150 of the Code defines the term “taxing district” as “any unit of local government, school district or community college district with power to levy taxes.” 35 **ILCS** 200/1-150..

beautifying, maintaining, and operating playgrounds, parks, parkways, public grounds, buildings, and institutions owned or controlled by the city or village; and,

- (e) all property owned by a township and operated as senior citizen housing under Sections 35-50 through 35-50.6 of the Township Code [60 ILCS 1/35-50 to 1/35-50.6].

35 ILCS 200/15-60.

**200/15-75. Municipal Corporations**

§ 15-75. 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 200/15-80.

**200/15-80. Installment purchase of property by a governmental body**

§ 15-80. Installment purchase of property by a governmental body. All property that is being purchased by a governmental body under an installment contract pursuant to statutory authority and used exclusively for the public purposes of the governmental body is exempt, except such property as the governmental body has permitted or may permit to be taxed.

35 ILCS 200/15-80.

Like all provisions exempting real estate from taxation, Sections 15-60, 15-75 and 15-80, as well as the subsections thereof, must be strictly construed against exemption, with all unproven facts 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). Therefore, applicant bears the burden of proving, by a standard of clear and convincing evidence, that the property (or, in this case, properties), that it is seeking to exempt falls within the provisions under which the exemption is sought. *Id.*

The class of entities that the General Assembly intended to benefit through enactment of the above-stated provisions is limited to duly qualified “taxing districts” in the case of Section 15-60, duly qualified “municipal corporations in the case of Section 15-75, and duly qualified “governmental bodies” in the case of Section 15-80. 35 ILCS 200/15-60, 15-75, 15-80. While there is no dispute that the City qualifies as “taxing district,” “municipal corporation” and “governmental body” for purposes of these exemption provisions, the City is not the applicant in this case. Furthermore, the entity that is the applicant herein, USX, seeks the benefit of being relieved of its tax liability under Sections 15-60, 15-75 and/or 15-80 despite its status as a privately held corporation.

The fact that USX maintains this status is crucial to the outcome of this case, as is the fact that the Agreement specifically obligates USX, and not the City, to pay any and all real estate taxes levied against the subject properties. The former is important because our courts have repeatedly and consistently denied exemption to properties that are used for exempt purposes but owned by private interests. Wheaton College v. Department of Revenue, 155 Ill. App.3d 945, 947-948 (2<sup>nd</sup> Dist. 1987); Victory Christian Church v. Department of Revenue, 264 Ill. App.3d 919, 921-923 (1<sup>st</sup> Dist. 1988)); Swank v. Department of Revenue, 336 Ill. App.3d 553 (2<sup>nd</sup> Dist. 2003).

USX correctly points out that the “owner” of real estate for property tax purposes is not necessarily synonymous with the entity or individual that holds legal title thereto. People v. Chicago Title and Trust, 75 Ill.2d 479 (1979)); Chicago Patrolmen's Association v. Department of Revenue, 171 Ill.2d 263 (1996)). It also correctly asserts

that the determinative indicia of ownership are, for present purposes, the right to control the property and the right to enjoy its benefits. *Id.*

The Agreement does contain certain provisions, such as those that prohibit USX affecting any type of change in the status of the title to any or all of the subject properties, which suggest that the City maintains a right of control over these properties. However, the City is not the applicant in this case. Furthermore, because the applicant did not submit the ““Land Conveyance and Use Agreement,” which provides specific details governing the various rights and responsibilities under the Agreement, I am unable to discern whether any of the other factors indicative of “ownership” in fact rest with the City.

These factors include whether the written instrument that creates and governs the respective property interests: (a) allows the purported “owner” to obtain a “substantial monetary interest” in the property (Christian Action Ministry v. Department of Local Government Affairs, 74 Ill.2d 51, 54, 61 (1978); (b) makes that “owner” liable to pay any property taxes assessed against the property (Wheaton College, *supra* at 946; Christian Action Ministry, *supra* at 61; and, (c) enables that “owner” to receive any tax benefits that the instrument provides. (Wheaton College, *supra* at 948).

The Agreement submitted as Applicant Ex. No. 5 fails to specify what, if any, monetary interest the City maintains in the subject properties. Nor does it provide any details concerning the financial aspects of the transactions whereby USX will ultimately convey these properties to the City. While the ““Land Conveyance and Use Agreement,” may disclose this information, the applicant did not submit that document into the record.

Such an absence of information stands in stark contrast to the record in Christian Action Ministry, where the instrument in question, a contract for warranty deed, obligated the Ministry to make a down payment of \$30,000.00 and make monthly payments of \$2,500.00 toward the purchase price. Christian Action Ministry, *supra* at 54. Although the actual purchase price was not specified in the court's opinion, the contract for warranty deed did specify that the Ministry was to be liable for all of the real estate taxes levied against the property. *Id.*

These factors persuaded the Christian Action Ministry court to reject the Department's contention that the property was not in exempt ownership because the Ministry obtained its interest in the property through a contract for deed rather than a conventional purchase money mortgage. *Id.* at 61-62. Thus, the court concluded that "[t]o penalize [an otherwise exempt entity] for ... making the alternative arrangement of a contract for sale of property in order to carry [out its otherwise exempt activities] runs counter to the stated policy objective and policy consideration of encouraging [such activities]." *Id.*

This record fails to disclose that compelling USX to honor its contractual obligation to pay those real estate taxes that are levied against the subject property would effectuate such a penalty. Instead, it unmistakably demonstrates that a non-exempt, private corporation, USX, would obtain tax savings that USX is not lawfully entitled to receive if USX were awarded the property tax exemptions that it seeks herein. For this reason, the present case is distinguishable from Christian Action Ministry in that the tax savings granted in that case actually inured to the benefit of a *bona fide* tax-exempt

entity, the Ministry. Based on this distinction, USX's attempt to apply the holding in Christian Action Ministry to the facts presented in this case fails.

It is true that public policy strongly disfavors requiring public entities, such as the City, from expending the funds that they can raise only through levying and collecting taxes on the payment of other taxes. United States v. Hynes, et al., 20 F.3d 1437 (7th Cir. 1994). However, granting the exemption that USX seeks in this matter will not effectuate this policy because the City is not the applicant in this case. Nor will the City actually receive the benefit of any tax savings associated with the exemptions that USX presently seeks unless and until USX extinguishes its liability for real estate taxation by conveying the subject properties to the City according to the timetable set forth in the Agreement. For this reason, the mere fact that the Agreement contains language indicating that the City endorses the legal theory that USX advocates in this case is of no legal significance.

What is significant is that the Agreement specifically obligates a non-exempt entity, USX, to pay any and all real estate taxes levied against the subject properties. Thus, even if I assume, strictly for purposes of argument, that all of the remaining indicia of "ownership" rested with the City, it is a privately held corporation, USX, and not the City, that will reap the tax savings of any exemptions granted in this case. Because USX is not lawfully entitled to claim these savings under Sections 15-60, 15-75, 15-80 or any other provision of the Property Tax Code, the Department's initial determination in this matter should be affirmed.

WHEREFORE, for all the above stated reasons, I recommend that: (a) real estate identified by parts of the Cook County Parcel Numbers that appear in the attached Appendix I and the legal descriptions that are attached thereto not be exempt from 2001 real estate taxes; and, (b) that such taxes be assessed against the owner of said property, USX.

Date: 4/1/2004

Alan I. Marcus  
Administrative Law Judge

**APPENDIX I**

**DOCKET NO. 03PT008**

**USX v. ILLINOIS DEPARTMENT OF REVENUE**

**LIST OF PARCEL INDEX NUMBERS**

**21-32-100-002 (Part of)**

**21-32-212-002 (Part of)**

**21-32-213-005 (Part of)**

**21-32-213-006 (Part of)**

**21-32-213-004 (Part of)**

**(See attached legal descriptions)**