

**PT 04-29**

**Tax Type: Property Tax**

**Issue: Charitable Ownership/Use**

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

---

---

**USX CORPORATION,  
APPLICANT**

**v.**

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

**Nos: 03-PT-0097  
(02-16-2921)  
PINS: 21-32-100-002 (part of), *et al.*  
(See Appendix I)**

---

---

**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 (collectively referred to as the “subject properties”) qualify for exemption from 2002 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 November 6, 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.

USX subsequently filed a timely appeal to this determination. While its appeal was pending, the Department, on April 1, 2004, issued the Recommendation for Disposition in that Administrative Hearings Docket Matter entitled USX v. Department of Revenue of the State of Illinois, Administrative Hearings Docket Number 03 PT 0008. This Recommendation affirmed the Department's initial determination finding that the subject properties did not qualify for exemption from 2001 real estate taxes under Sections 15-60, 15-75 and/or 15-80 of the Property Tax Code on grounds of lack of exempt ownership and lack of exempt use.

Pursuant to the Administrative Review Law, 735 **ILCS** 5/3-101, *et seq.*, USX sought Administrative Review of this Recommendation. That Administrative Review matter, Docket Number 04-L-050454, is currently pending in the Circuit Court of Cook County.

In order to facilitate resolution of this case and the Administrative Review matter, the parties entered into a Stipulation, whereby they expressly agreed to waive their rights to hearing herein and have this matter decided on the basis of the Stipulation and its supporting documentation. After carefully reviewing the Stipulation and its supporting documentation, 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 its initial determination, issued by the Office of Local Government Services on November 6, 2003, finding that the subject properties are not in exempt ownership and not in exempt use. Stipulation Ex. No. 3.
2. The parties have stipulated as follows:
  - A. That all of the documents that formed the record in Administrative Hearings Docket Number 03-PT-0008 shall be part of the record in this case. Stipulation, ¶5; and,
  - B. That, in addition to the documents referenced above, the record in this case shall include a certain Land Conveyance and Use Agreement, dated July 21, 2001, that the parties included as part of Stipulation Ex. No. 2. Stipulation, ¶3.
3. In accordance with the parties' Stipulation, I adopt all of the Findings of Fact set forth in the Recommendation for Disposition in Administrative Hearings Docket Number 03-PT-0008 as Findings of Fact herein. Stipulation, ¶5.
4. In addition, I make the following Findings of Fact relative to the Land Conveyance and Use Agreement (the "Agreement"):
  - A. That the Agreement is dated July 21, 2001 and made between the City, a municipal corporation, and USX, a Delaware for-profit corporation;
  - B. That the Agreement provides, in relevant part, that:
    1. USX is to convey the subject properties to the City upon the occurrence of certain specified conditions precedent;

2. All of these conditions precedent related to the opening of certain roadways that were to be constructed as part of the South Chicago redevelopment project;
3. In the event that one or more of these conditions precedent do not occur within seven years of the date of the Agreement, then, upon due notice from USX, the City shall have an additional two years within which to accomplish the necessary construction. If the City should then fail to complete that construction within the additional two year time frame, then USX shall have no further obligation to convey any of the subject properties to the City;
4. Prior to the completion of all conveyances from USX to the City, USX shall not, without prior written consent of the City, encumber or otherwise effectuate any transfer that affects the legal status of any of the subject properties. Nor shall USX physically alter the condition of any of these properties in a manner that might effect the City's capacity to develop them;
5. The following shall constitute events of default on the part of USX: (a) USX fails to observe any of its obligations that arise under the Agreement; (b) USX fails to make timely payment of any real estate taxes levied against the subject properties or causes any legally enforceable liens to be attached thereto; and, (c) USX makes any assignment, pledge, encumbrance, transfer or other disposition in violation of the Agreement;

6. If any of the above-referenced events of default should occur while the Agreement remains in effect, then following appropriate notice and the expiration of a specified period for cure, the City may remedy the default by instituting such legal or equitable proceedings as the City, in its sole discretion, may deem necessary to cure the event of default.

Stipulation Ex. No. 2.

**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>[1]</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;

---

1. 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..

- (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 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 Recommendation for Disposition in Administrative Hearings Docket Number 03PT0008 set forth numerous Conclusions of Law explaining why the subject properties do not qualify for exemption under any of the statutes referenced above. In the interest of brevity, and pursuant to the parties' Stipulation, all of the Conclusions of Law set forth in that Recommendation are hereby adopted as Conclusions of Law herein.

The parties do, nevertheless, raise an issue not decided in the previous Recommendation. This issue was not raised because the parties failed to submit the Land Conveyance and Use Agreement (the "Agreement") into the record upon which that Recommendation was based. The parties have now submitted that Agreement and stipulated that the sole issue for decision in this matter is whether the terms and conditions set forth in the Agreement alter any of the Conclusions reached in the Recommendation. For the following reasons, I conclude they do not.

The Recommendation concluded, in substance, that the subject properties did not qualify for exemption under Sections 15-60, 15-75 and 15-80 of the Property Tax Code because a private, for profit corporation, USX, was both the legal and equitable owner of

the subject properties during the tax year in question. Consequently, exempting these properties from real estate taxation would have the undesired policy effect of relieving that corporation of its otherwise lawful obligation to pay real estate taxes.

The same remains true under the Agreement, as this document specifies that USX is under an affirmative legal obligation, enforceable in a court of competent jurisdiction, to pay all real estate taxes levied against the subject properties. Furthermore, the Agreement prohibits USX from transferring or otherwise alienating the subject properties in any manner prior to the occurrence of any of the conditions precedent that trigger its obligations to convey these properties to the City. In this respect, it is USX, and not the City, that retains crucial incidents of ownership under the Agreement. 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).

Furthermore, the Agreement fails to disclose what, if any monetary interest the City maintains in the subject properties. Christian Action Ministry v. Department of Local Government Affairs, 74 Ill.2d 51, 54, 61 (1978). Nor does it provide any details concerning the financial aspects of the transactions whereby USX will ultimately convey these properties to the City. Instead, it only contains provisions that make all of these conveyances subject to a series of conditions precedent that, if unfulfilled, will ultimately terminate USX's obligations to convey the subject properties to the City.

In practical terms, these provisions create speculation as to when, if ever, the City will obtain the type of ownership interest that is necessary to qualify the subject properties for exemption under Sections 15-60, 15-75 and/or 15-80 of the Property Tax

Code. Despite this, it is clear that the City will not obtain such an interest unless and until USX completely divests itself of the ownership interest that it holds in these properties.

USX did not execute any conveyances that effectuated such a divesture at any point during the 2002 assessment year. Consequently, under terms of the Agreement, it is USX, and not the City, that remained both the legal and equitable owner of the subject properties throughout the tax year currently in question. Therefore, 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 not be exempt from 2002 real estate taxes; and, (b) that such taxes be assessed against the owner of said property, USX.

Date: 9/8/2004

Alan I. Marcus  
Administrative Law Judge

**APPENDIX I**

**DOCKET NO. 03PT097**

**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)