

PT 06-19
Tax Type: Property Tax
Issue: Government Ownership/Use

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

MIDCOAST AVIATION, INC. Applicant	A. H. Docket #	03-PT-0006
	Docket Nos.	02-82-57
		02-82-58
		02-82-59
v.	Parcel Index #s	01-36.4-300-012(57)
		01-36.4-300-011(58)
		01-36.4-300-001(59)
THE DEPARTMENT OF REVENUE OF THE STATE OF ILLINOIS		Barbara S. Rowe Administrative Law Judge

ORDER PURSUANT TO CROSS-MOTIONS FOR SUMMARY JUDGMENT

Appearances: Ms. Gretchen Garrison and Mr. Charles G. Misko of Stinson, Morrison, Heckler, L.L.P. for Midcoast Aviation, Inc.; Mr. Kent R. Steinkamp for the Illinois Department of Revenue.

Synopsis:

This cause comes on to be heard on cross motions for summary judgment filed by Midcoast Aviation, Inc. (hereinafter referred to as “Midcoast”, “Lessee” or “Applicant”) and the Illinois Department of Revenue (hereinafter referred to as the “Department”). The State’s Attorney of St. Clair County filed a Statement of Position of St. Clair County and St. Clair County Board of Review adopting the position of the Department.¹ Oral arguments were heard on the motions for summary judgment. The matters at issue concern the Department’s denial of

¹ The St. Clair County State’s Attorney did not otherwise participate in the hearing.

property tax exemptions for parcels of real estate located in St. Clair County, which the Department found not to be in exempt ownership and not in exempt use.² The parcels at issue are owned by the Bi-State Development Agency and are leased to Midcoast for the purpose of building hangars thereon and operating those hangars as part of the activities of the St. Louis Downtown Airport.

Midcoast argues that the “leasehold interests of Midcoast in exempt property owned by Bi-State Development Agency are not subject to property taxation under 35 ILCS 200/9-195 and 35 ILCS 300/15-103.” After a thorough review of the facts and law presented, it is my recommendation that the requested exemptions be denied and the Department’s motion for summary judgment be granted. In support thereof, I make the following findings and conclusions in accordance with the requirements of Section 100/10-50 of the Administrative Procedure Act (5 ILCS 100/10-50).

FINDINGS OF FACT:

1. The Department determined that St. Clair County Parcel Index Number (hereinafter referred to as “P.I.N.”) 01-36.4-300-011, identified by Docket No. 02-82-58, did not qualify for a property tax exemption for the 2002 assessment year because it was not in exempt ownership and not in exempt use. (Dept. Ex. No. 1)³

² This matter was placed on inactive status pending the resolution of a Board of Review Industrial/Commercial Assessment Complaint filed on behalf of Midcoast for the properties listed on the Complaint. The P.I.N.s listed on that complaint are 01-36.4-300-010, identified as Hangar 7; 01-36.4-300-011 identified as Hangar 7; 01-36.4-300-012, identified as Hangars 9 and 16; 01-36.4-300-013, identified as Hangar 9; and 01-36.0-300-031 identified as 14 Archview Drive, Cahokia, Illinois. (Applicant’s Motion to Place Proceeding on Inactive Status) The Board of Review matter was concluded without resolution.

³ The Department’s Exhibits are attached to the Department’s Memorandum of Law in support of its Motion for Summary Judgment. All subsequent Department Exhibits are similarly attached to the motion and are simply identified in this order as Dept. Ex. Nos. ____.

2. On the application, Applicant refers to P.I.N. 01-36.4-300-011 as Hangar 7.⁴ It consists of 187,000 square feet. It is owned by Bi-State Development Agency of the MO-IL Metropolitan District (hereinafter referred to as “Bi-State”) and leased to Midcoast.⁵ (Dept. Ex. No. 1)

3. The Department determined that St. Clair County P.I.N. 01-36.4-300-001 identified by Docket No. 02-82-59 did not qualify for a property tax exemption for the 2002 assessment year because it was not in exempt ownership and not in exempt use. (Dept. Ex. No. 1)

4. On the application, Midcoast refers to P.I.N. 01-36.4-300-001 as Hangar 16. It contains 107,335 square feet. It is owned by Bi-State and leased to Midcoast. (Dept. Ex. No. 1)

5. The Department determined that St. Clair County Parcel Index No. 01-36.4-300-012, identified by Docket No. 02-82-57, did not qualify for a property tax exemption for the 2002 assessment year because the property was not in exempt ownership and not in exempt use. (Dept Ex. No. 1)

6 On the application, Midcoast refers to Parcel Index No. 01-36.4-300-012 as Hangar 12. The parcel contains 7½ acres. It is owned by Bi-State and leased to Midcoast. (Dept. Ex. No. 1)

7. The Department received the requests for exemption of the subject parcels from the St. Clair County Board of Review. The board recommended denying the exemptions stating on each application that the leasehold is being assessed as a leasehold interest “under 35 ILCS

⁴ Midcoast asserts that the P.I.N. and hangar descriptions contained in the exemption applications were based on incorrect numbers and descriptions originally set forth in the notices of assessment. The assessor’s office subsequently corrected the information, but the record in this matter is unclear as to what corrections were made. All of the information forwarded to the St. Clair Board of Review and to the Department pertained to the same properties and only the parcel numbers/descriptions were incorrect. (Dept Ex. No. 1) The parcel index numbers on the applications are those used in this recommendation.

⁵ As successor in interest to Midcoast Parks, Inc.

200/9-195(B)[sic] and 200/15-103(B)[sic]”. The board stated that the property is not in exempt use and ownership, and this “[A]pplicant is not exempt.” (Dept. Ex. No. 1)

8. The fee interest on each parcel is exempt pursuant to its own Department Docket Number. (Dept. Ex. No. 1)

9. Midcoast is a commercial corporation organized under the General and Business Act of Missouri on July 2, 1957. It was originally incorporated as Young Aviation Corporation, changed its name on December 1, 1971 to Midcoast Aviation Services, Inc. and on December 14, 1983 changed its name to Applicant. (Dept Ex. No. 2)

10. Midcoast has shareholders, issues stock, pays dividends, has directors who are reimbursed for expenses for meetings, has a Chief Executive Officer, Chairman of the Board, one or more Vice-Presidents, a Secretary, and a Treasurer. Midcoast is a wholly-owned subsidiary of Sabreliner Corporation (hereinafter referred to as “Sabreliner”). (Dept. Ex. No. 2)

11. Sabreliner deals in jet aircraft support and maintenance. “Diversification far beyond our original focus on jet aircraft support and maintenance began in the mid 1980’s. Sabreliner has extended the breadth of its aviation support capabilities to include a wide variety of commercial and military aircraft and detail part manufacturing.” (Dept. Ex. No. 2)

12. Midcoast is a corporate jet “fixed base operator” (hereinafter referred to as a “FBO”) for Sabreliner. Midcoast was acquired by Sabreliner from Trans World Airlines in 1994. Midcoast has four locations: Lambert-St. Louis International Airport; St. Louis Downtown Airport in Cahokia, Illinois; Spirit of St. Louis in Chesterfield, Missouri; and Perryville Municipal Airport in Perryville, Missouri. (Dept. Ex. No. 2)

13. Bi-State is the owner and operator of the St. Louis Downtown Airport known as Bi-State Parks Airport. The airport has been designated as a “Reliever Airport” in the National

Plan of Integrated Airport Systems by the Secretary of Transportation. As a reliever airport, the airport is responsible for providing certain essential aviation line services required for the operation of a reliever airport pursuant to Federal Aviation Administration (hereinafter referred to as the “FAA”) regulations and orders. The 334 reliever airports in the United States account for 7 percent of the \$35.1 billion in infrastructure development that is eligible for federal aid. The \$35.1 billion figure is estimated to be needed over the next 5 years to meet the needs of all segments of civil aviation. (Dept. Ex. Nos. 3, 4, 5; Applicant’s Ex. B)

14. “General aviation pilots often find it difficult and expensive to gain access to congested airports, particularly large and medium hub airports. In recognition of this, the FAA has encouraged the development of high capacity general aviation airports in major metropolitan areas. These specialized airports, called relievers, provide pilots with attractive alternatives to using congested hub airports. They also provide general aviation access to the surrounding area. The 334 reliever airports have an average of 181 based aircraft, and together account for 32 percent of the Nation’s general aviation fleet. All of the airports that are designated as relievers by the FAA are included in the National Plan of Integrated Airport Systems.” (Applicant’s Ex. B, U.S. Department of Transportation FAA Report to Congress, National Plan of Integrated Airport Systems (1998-2002), March 1999)

15. Reliever airports have been successful at relocating general aviation activity at congested airports. As a result, general aviation activity at those airports is a small percentage of total operations (3.9% of the operations at O’Hare; 2.9% at Atlanta Hartsfield; and 5.8% of the operations at LaGuardia Airport) while general aviation activity at all other airports with airport traffic control towers accounts for nearly 60 percent of the operations. Thirty-one percent (31%)

of the general aviation aircraft in the United States are based at the 334 reliever airports. (Applicant's Ex. B)

16. According to the Airports Compliance Handbook Order 5190.6A⁶, airport owners subject to obligations to the Federal Government may enter into arrangements which have the effect of delegating some of those obligations to other parties. Prevalent at small airports are arrangements in which the owner relies upon a commercial operator or tenant to cover a broad range of airport operating or maintenance responsibilities. No contractual delegation of responsibility absolves or relieves the airport owner from its primary obligations to the Government. The owner of an airport developed with Federal assistance is more than a passive landlord. The obligation to maintain the airport includes the responsibility to operate the aeronautical facilities and common areas for the benefit of the general public. The airport owner cannot delegate its authority to one FBO to negotiate an operating agreement (lease) with another FBO. Concerns of Order 5190.6A include safety, efficiency, and making sure the facility is open to the public without discrimination. (Applicant's Ex. C)

17. Bi-State has contracted with Midcoast to have Midcoast act as an FBO for the Bi-State Parks Airport. As an FBO, Midcoast provides essential aviation line services required for the operation of a reliever airport. (Dept. Ex. Nos. 3, 4, 5)

18. The essential aviation line services required by the FAA and provided by Midcoast at the airport include: aircraft servicing consisting of fuel, oil, tie-down, hangar storage and baggage handling services; pilot flight plan planning and lounge facilities; aircraft, airframe, power plant, and avionics maintenance; and customer service representatives to assist with the travelers' needs. (Dept. Ex. Nos. 3, 4, 5)

⁶ The exhibit was not a complete copy of the Order, i.e. Chapter 1 was followed by Chapter 4, §4-8 was followed by §4-20, and Chapter 4 was followed by Chapter 6.

19. Any entity offering services at St. Louis Downtown Airport must do so under a written lease agreement with Bi-State. All such leases must contain anti-discriminatory language and shall be for a minimum of one (1) year and a maximum of five (5) years. (Applicant's Ex. I)

20. Midcoast and Bi-State entered into a five (5) year Line Service Agreement on July 1, 1996 and again on July 1, 2001. The agreement allows Midcoast to engage in aeronautical activities including the retail sale of fuel and oil products, provision line service functions and collection of transient tiedown revenues on transient aircraft aprons. In exchange, during every 12-month period of the contracts, Midcoast pays Bi-State monthly fuel flowage fees based upon nine (9) cents a gallon for all aviation gasoline and/or jet fuel purchased by Midcoast, and fifteen (15) cents a quart for oil purchased by Midcoast. Midcoast is allowed a fair and reasonable markup on these items. The markup and selling price must be approved in advance by Bi-State. (Applicant's Exhibit D)

21. According to the lease agreements⁷ between Bi-State and Midcoast, Midcoast is also to provide such aeronautical activities as the sale, rental, charter, painting, modification, maintenance and storage of aircraft, engines, instruments and assemblies. In addition, it is required to provide charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products (whether or not conducted in conjunction with other aeronautical activity), repair and maintenance of aircraft, sale of aircraft parts and any other activities which, because of their direct relationship to the operation of aircraft, can be regarded as an aeronautical activity. (Dept Ex. Nos. 3, 4, 5)

22. The lease for hangar number 7 was entered into on November 7, 1979 for property described as:

Approximately 187,000 square feet of land which includes the aircraft hangar now under construction, commonly referred to as Hangar VII, and the area surrounding Hangar VII, all of which is set forth in Exhibit "A" which is attached hereto and incorporated herein by this reference.

Midcoast desired to occupy the hangar being erected on the property and agreed to provide \$200,000 toward the construction of it. The term of the lease was for fifteen (15) years "commencing on the date of the final beneficial occupancy inspection of the hangar" and Midcoast had the option of extending it for five (5) years. Midcoast pays a rental fee of approximately \$7,825 per month starting after the beneficial occupancy inspection. Midcoast may not sub-let without the written permission of Bi-State. "If at any time the property becomes subject to any federal, state or local taxes, property, excise or otherwise, the Lessee agrees to assume the payment of such taxes" and an appropriate adjustment shall be made in the monthly rental amount of the lease to bring this about. On April 20, 1990, the parties amended the lease to change the wording in the premises section to state that the land included Hangar VII. (Dept. Ex. No. 3; Applicant's Ex. H)

23. On July 1, 1990, Bi-State and Midcoast executed a "Hangar VII Second Amendment to Lease Agreement" changing the lease term to fifteen (15) years commencing on the date of the final beneficial occupancy inspection of the hangar unless the term is sooner terminated. Midcoast has the option to extend the lease for an additional nine (9) years at the expiration of the fifteen (15) years followed by up to ten (10) additional renewal terms of five (5) years each if Midcoast notifies Bi-State in advance. (Dept. Ex. No. 3; Applicant's Ex. H)

⁷ Submitted by Midcoast with the Applications for Property Tax Exemption.

24. On July 28, 1992, Bi-State and Midcoast entered into a lease for hangar 16⁸ located on approximately 107,335 square feet (2.46 acres) of land described in the lease as: “Approximately 107,335 square feet of land referred to as set forth in Exhibit ‘A’ which is attached hereto and incorporated herein by reference.” The lease is for twenty (20) years and terminates on April 30, 2012. The lease has an option to renew for ten (10) additional terms of five (5) years each. Rent for the leased premises is \$12,880 per-year payable in equal monthly installments of \$1,073.33, adjustable each July 1st based upon operating and capital costs incurred by Bi-State. The lease contains a right of first refusal for an option to rent an additional parcel and the terms of that option. If the property becomes subject to tax, Midcoast agrees to assume payment of the taxes. Midcoast may not sub-let the premises without written approval of Bi-State. Under the conditions of the lease, Midcoast, at its own expense, is required to build a metal structure suitable for aeronautical activities. If Midcoast leases the property for twenty (20) years or leases the property for less than twenty (20) years and fails to extend the lease, all structures constructed on the property by Midcoast become the property of Bi-State. If there is a breach of the agreement by Midcoast, or if it defaults on the agreement, then all rights to any structures are vested in Bi-State. If Midcoast is not in default and ceases operations it may notify Bi-State in writing of its decision to cease operations and Bi-State has the right to purchase the structures constructed on the premises at a price equal to the fair cash value of the Midcoast’s interest in the structures as determined by a fair market appraisal. If Bi-State declines to purchase the structures, Midcoast may sub-let, subject to the approval of Bi-State. If at any time the property becomes subject to taxation, Midcoast agrees to assume the payment of the taxes and include that amount with the rental payments. (Dept. Ex. No. 4; Applicant’s Ex. G)

⁸ The lease has other amendments attached including options to lease, for monetary consideration, between Bi-State and Sabreliner, and another option to lease between Bi-State and Midcoast for additional property.

25. An amendment to the lease agreement dated July 28, 1992 was executed by Bi-State and Midcoast on April 14, 1998. The amendment changed the area leased to five acres. (Dept. Ex. No. 4)

26. A subsequent amendment to the lease agreement was executed by Bi-State and Midcoast on December 24, 1998 changing the language in the Option to Renew section to adjust the amount of rent to be charged if lessor could lease such property to another non-affiliated party at a higher rate. Another amendment was signed on February 9, 1999 permitting Midcoast to use its interest in the property as collateral for a loan. (Dept. Ex. No. 4)

27. On March 23, 1984, Bi-State and Midcoast entered into a 20-year lease agreement entitled "Hangar 12 LEASE AGREEMENT" for approximately 7½ acres of land being parcels one (1) and two (2) on Exhibit A attached to the lease. Midcoast agreed to construct two structures on the property suitable for use for airplane maintenance and/or storage hangars. The construction was approved by the Illinois Department of Transportation, Division of Aeronautics. Midcoast agreed to begin construction of one of the buildings within 36 months of the lease and the second within 60 months. The premises are only to be used for aeronautical activities. The initial rent for the premises was \$26,130 per-year payable in monthly installments of \$2,178. The rent is adjusted each July 1st based upon the prevailing rate of rent at the airport. Midcoast has the option for up to ten (10) renewal terms of five (5) years each. Midcoast has the right to sub-let the premises with the written approval of Bi-State. If Midcoast leases the property for twenty (20) years or leases the property for less than twenty (20) years and fails to extend the lease, all structures constructed on the property by Midcoast become the property of Bi-State. If there is a breach of the agreement by Midcoast, or if it defaults on the agreement, then all rights to any structures are vested in Bi-State. If Midcoast is not in default and ceases

operations it may notify Bi-State in writing of its decision to cease operations and Bi-State has the right to purchase the structures constructed on the premises at a price equal to the fair cash value of the Midcoast's interest in the structures as determined by a fair market appraisal. (Dept. Ex. No. 5; Applicant's Ex. F)

28. If Bi-State declines to purchase the structures, pursuant to the lease, Midcoast may sub-let subject to the approval of Bi-State. If at any time the property becomes subject to taxation, Midcoast agrees to assume the payment of the taxes and include the payment with the rental payments. (Dept. Ex. No. 5; Applicant's Ex. F)

29. The "Hangar XII" lease was amended on April 20, 1990 to show that the parcel is approximately seven and eighty-six hundredths (7.86) acres of land and to state that the structure on parcel one (1) vests in Bi-State if Midcoast fails to extend the lease agreement or leases parcel one (1) for twenty (20) years. In the event Midcoast leases parcels two (2) and three (3) for twenty-five (25) years or leases parcels two (2) and three (3) for less than twenty-five (25) years and fails to extend the lease agreement, then the structures on parcels two (2) and three (3) become vested in Bi-State. (Dept. Ex. No. 5; Applicant's Ex. F)

30. Bi-State, Jefferson Bank and Trust and Midcoast executed a consent to an assignment of the lease for the 7.86 acres on July 2, 1990. The consent shows that rent payments at the time were \$2,853.18 and that Bi-State consented to the assignment of the lease to the bank. The ownership interest of Bi-State to any fixtures or personal property located on the property is subordinate to the interest of the bank. The attachments to the consent show hangars seven and nine on the parcels. (Dept. Ex. No. 5; Applicant's Ex. F)

31. An amendment to the lease agreement between Bi-State and Midcoast, entitled “HANGAR XII AMENDMENT TO LEASE AGREEMENT” was also executed on July 2, 1990, changing the amount of land leased to 8.33 acres. (Dept. Ex. No. 5; Applicant’s Ex. F)

32. Another amendment to the lease agreement, dated April 14, 1998, also entitled “HANGAR XII AMENDMENT TO LEASE AGREEMENT” was executed between Bi-State and Midcoast. The amendment changed the amount of land leased to six and forty-five hundredths (6.45) acres. (Dept. Ex. No. 5; Applicant’s Ex. F)

33. For the fiscal year ending June 30, 2002, Midcoast’s unaudited financial information shows: sales - \$126,410,000; cost of sales - \$104,606,000 for a gross profit of \$21,804,000; selling, administrative and general expenses were \$9,969,000; other (income) expenses were (\$138,000) for earnings before interest and taxes of \$11,973,000. Interest expense for that period was \$176,000 for operating income of \$11,797,000. Income tax expense was \$4,483,000, which yielded a net income of \$7,314,000. The earnings before interest, taxes, depreciation and amortization amount, for that time period, was \$13,232,000. (Dept. Ex. No. 2)

34. The parties agree that there are no genuine issues of material facts. (Tr. pp. 36-37)

CONCLUSIONS OF LAW:

Article IX, §6 of the Illinois Constitution of 1970 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.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill. 2d 484 (1992)

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill. 2d 141 (1956) Whenever doubt arises, it is to be resolved against exemption and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944). Further, in ascertaining whether a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill. 2d 272 (1967)

Both the Applicant and the Department have submitted motions for summary judgment. Under Section 2-1005(c) of the Code of Civil Procedure, a party is entitled to summary judgment “if pleadings, depositions and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” 735 **ILCS** 5/2-1005(c)

Midcoast requested a property tax exemption for St. Clair County Parcel Index Nos. 01-36.4-300-001, 01-36.4-300-011 and 01-36.4-300-012. The St. Clair County Board of Review recommended denying the property tax exemptions because the properties had been assessed to Midcoast as leasehold interests and Midcoast was not an exempt entity using the property for exempt purposes. The Department agreed with the Board. Midcoast protested the determination and timely requested a hearing.

Applicant asserts in its cross-motion for summary judgment that “the leasehold interests of Midcoast in exempt property owned by Bi-State are not subject to property taxation under 35 **ILCS** 200/9-195 and 53 **ILCS** 300/15-103.” (Applicant’s Cross-Motion p. 1) 35 **ILCS** 200/15-103 states:

§ 15-103. Bi-State Development Agency.

(a) Property owned by the Bi-State Development Agency of the Missouri-Illinois Metropolitan District is exempt.

(b) The exemption under this Section is not affected by any transaction in which, for the purpose of obtaining financing, the Agency, directly or indirectly, leases or otherwise transfers the property to another for which or whom property is not exempt and immediately after the lease or transfer enters into a leaseback or other agreement that directly or indirectly gives the Agency a right to use, control, and possess the property. In the case of a conveyance of the property, the Agency must retain an option to purchase the property at a future date or, within the limitations period for reverters, the property must revert back to the Agency.

(c) If the property has been conveyed as described in subsection (b), the property is no longer exempt under this Section as of the date when:

- (1) the right of the Agency to use, control, and possess the property is terminated;
- (2) the Agency no longer has an option to purchase or otherwise acquire the property; and
- (3) there is no provision for reverter of the property within the limitations period for reverters.

(d) Pursuant to Sections 15-15 and 15-20 of this Code, the Agency shall notify the chief county assessment officer of any transaction under subsection (b). The chief county assessment officer shall determine initial and continuing compliance with the requirements of this Section for tax exemption. Failure to notify the chief county assessment officer of a transaction under this Section or to otherwise comply with the requirements of Sections 15-15 and 15-20 of this Code shall, in the discretion of the chief county assessment officer, constitute cause to terminate the exemption, notwithstanding any other provision of this Code.

35 **ILCS** 200/9-195(a) states:

§ 9-195. Leasing of exempt property.

(a) Except as provided in Sections 15-35, 15-55, 15-60, 15-100, 15-103, and 15-185, when property which is exempt from taxation is leased to another whose property is not exempt, and the

leasing of which does not make the property taxable, the leasehold estate and the appurtenances shall be listed as the property of the lessee thereof, or his or her assignee. Taxes on that property shall be collected in the same manner as on property that is not exempt, and the lessee shall be liable for those taxes. However, no tax lien shall attach to the exempt real estate. . . .

(b) The provisions of this Section regarding taxation of leasehold interests in exempt property do not apply to any leasehold interest created pursuant to any transaction described in subsection (e) of Section 15-35, subsection (b) of Section 15-100, or Section 15-103.

As part of its argument, Midcoast asserts that Bi-State, as a statutorily created body corporate, is empowered to plan, construct, maintain, own and operate airports and terminal facilities, and to perform all other necessary and incidental functions. To effectuate this, Bi-State is authorized to acquire by lease, purchase, or gift, airports and other terminal or parking facilities. (45 ILCS 110/1(1); Mo. Rev. Stat. §70.373(1)). Because Bi-State was and is unable to provide all the necessary funds for buildings, hangars and other facilities required to provide essential aviation services at the airport, Bi-State obtains such facilities through the initial investment from tenants such as Midcoast. Because title ownership will automatically vest in Bi-State at the completion of the vesting period, or earlier with the termination of the lease agreements, each lease serves as a financing device for Bi-State. Midcoast asserts:

Pursuant to 35 ILCS 200/9-195, the Illinois Legislature has characterized leasehold interests as real estate for purposes of property tax exemption *except* for certain leasehold interests, including those created pursuant to a transaction described in 35 ILCS 200/15-103. By the unambiguous language of Section 200/9-195, the holder of such a leasehold interest need not be a tax-exempt entity. To the contrary, Section 200/9-195(a) expressly contemplates that Bi-State property (exempt under Section 200/15-103) will be leased “to another whose property is not exempt.” 35 ILCS 200/9-195(a). Because the taxing provisions of Section 200/195 “do not apply” to leasehold interests created pursuant to a transaction described in Section 200/15-103, such leasehold interests are excluded rather than exempted from property taxation.

Therefore, according to Midcoast, the Constitutional limitations in article IX, §6 do not apply. Midcoast also asserts that the leasehold interests “were created pursuant to transactions described in Section 200/15-103, and thus are excluded from the definition of taxable real property under Section 200/9-195.” (Applicant’s Cross-Motion For Summary Judgment.)

These are novel arguments. The Illinois Constitution empowers the State to tax and to grant property tax exemptions. There is no language about exclusions – property is either taxable or exempt. The well-settled rule of law in Illinois is that all property is subject to taxation, unless exempt by statute in conformity with the constitutional provisions relating thereto. DuPage County Airport Authority v. Department of Revenue, 358 Ill. App. 3d 476, 484 (2nd Dist. 2005) “The basic premise, that statutes providing exemption from taxation shall be strictly construed because article IX of the Constitution subjects all property to taxation (see Wesley Willows v. Munson (1969), 43 Ill.2d 203, 207, 251 N.E.2d 249), remains valid.” Small v. Pangle, 60 Ill. 2d 510, 514 (1975) As Midcoast has cited no authority for its claim that there are exclusions from property taxation, and case law clearly establishes that property is either taxable or exempt, I cannot agree that the leasehold interests at issue are excluded from property taxation.

The plain language of 35 **ILCS** 200/15-103 is that property owned by Bi-state is exempt. The exemption is not affected by any transaction for the purpose of obtaining financing when Bi-State directly or indirectly leases the property to another for whom the property is not exempt and immediately after the lease enters into a leaseback or other arrangement that directly or indirectly gives Bi-State the right to use, control and possess the property.

In Cole Hospital v. Champaign County Board of Review, 113 Ill. App. 3d 96 (4th Dist. 1983), the appellate court determined that a sale and lease-back arrangement qualified for a

property tax exemption because it was, in fact, a financing device. Cole Hospital, due to its financial situation, was unable to qualify for State revenue bonds to finance construction of a new hospital. Safe Care, Inc. of Seattle Washington, arranged a five and one-half million dollar conveyance and lease-back arrangement for the construction of the new facility. The ostensible purpose of the arrangement was to permit Safe Care, in the event of a default by Cole, to acquire the property and resell or relet it without foreclosure proceedings. The statute at issue in Cole Hospital v. Champaign County Board of Review, *supra*, concerned exemptions of charitable entities, which requires both exempt ownership and use. The court stated, relying on Christian Action Ministry v. Department of Local Government Affairs, 74 Ill. 2d 51 (1978), that the 20-year lease with two 10-year options to renew and an annual rent of 13½% of the \$5,500,000 advancement, entitled Cole Hospital to an exemption. Elements of the record that the Cole Hospital court relied upon to reach that conclusion included the extensive efforts that the hospital made to obtain financing and the fact that the lease itself had no provision for a conventional security deposit.

The leases at issue allow Midcoast control of the leasehold interest for a minimum of five (5) years. That is not an immediate transfer back to Bi-State, as required by 35 ILCS 200/15-103, and does not qualify for an exemption under the statute. There were no indications in the leases that the arrangements were done so that Bi-State could obtain financing for its airport operations. An analogy might be drawn to the Cole Hospital case, but herein Bi-State has its own exemption statute and specific language regarding how financing might be achieved and exempt the leasehold from taxation. In this matter, the indicia of ownership and rights of domination, including possession, control and use of the hangars remain with Midcoast, unless Midcoast defaults on its obligations with Bi-State. The record does not provide that, pursuant to

the leases and agreements, Bi-State may use or control the property as long as Midcoast is abiding by the terms of its contracts.

Bi-State must provide essential aviation line services required for the operation of a reliever airport pursuant to FAA regulations, and may enter into arrangements delegating some of those obligations to other parties. However, there is nothing in the record or statutes to relieve Midcoast of its obligations to pay leasehold tax on its interest in the properties in question. It is very clear from the record that Midcoast is a for-profit corporation that intends to and does profit from its property agreements with Bi-State. Midcoast, in its capacity as a FBO providing aeronautical activities to a reliever airport, services airplanes, sells gas and oil products, has tie-down, hangar and baggage storage, provides maintenance, pilot flight plan planning and lounge facilities and customer service representatives to assist with traveler's needs. As an FBO for a reliever airport, Midcoast has a distinct advantage in that it is located in an airport that caters to general aviation pilots and their 32 percent of the Nation's general aviation fleet. There is no indication that this location has any convenience factors that might be considered negative and Midcoast has not articulated a business disadvantage regarding its location. Similar businesses must pay property taxes on their land and consider it to be part of the cost of doing business. It would not be in the public interest to give a property tax exemption to a for-profit corporation that intends to and does profit from its operations, and put other similarly situated businesses at a disadvantage. Midcoast has articulated no public policy for granting the exemption.

Further, for the fiscal year ending June 30, 2002, Midcoast had net income of \$7,314,000 and its earnings before interest, taxes, depreciation and amortization were \$13,232,000. These are not negligible amounts. The record establishes that Midcoast is profiting from the

arrangement. It is very clear that Midcoast is a for-profit corporation that intends to and does profit from its property agreements with Bi-State.

35 ILCS 200/9-195 is applicable to the facts at issue. That provision requires that when exempt property is leased to another whose property is not exempt, and the leasing of which does not make the property taxable, the leasehold estate is taxable to the lessee. That is what the St. Clair County Board of review properly did. Bi-State's exemption is coupled, but not legally affected by, the leasing of the property to an entity that is not exempt, in this case Midcoast. A leasehold valuation is then placed on the leasehold estate and assessed to Midcoast.

As an alternative argument, Midcoast asserts that its leasehold interests are not taxable for the reason that Midcoast acts as an agent and instrumentality of Bi-State, and its dealings are in furtherance of, and necessary to, the discharge of Bi-State's public purpose and function. As the Department states in its "Response To Applicant's Cross-Motion for Summary Judgment" the public purpose doctrine, first announced by the Illinois Supreme Court in Illinois State Toll Highway Commission v. Korzen, 32 Ill. 2d 338 (1965), was overruled by the legislature by amending the Toll Highway statute. The initial language of the statute was that "All property belonging to the Authority and the said toll highways shall be exempt from taxation."⁹ The amendment, effective October 1, 1973, changed the statute to state: "All property belonging to the Authority, and the toll highways, shall be exempt from taxation. However, such part of that property as has heretofore been or shall hereafter be leased by the Authority to a private individual, association or corporation for a use which is not exempted from taxation under Section 19 of the Revenue Act of 1939, is subject to taxation as provided in Section 26 of the Revenue Act of 1939, regardless of any provision in such lease to the contrary."¹⁰ The

⁹ Ill. Rev. Stat., 1967, ch. 121, par. 100-22.

¹⁰ Ill. Rev. Stat., 1973, ch. 121, par. 100-22.

amendment negated the effect of Illinois State Toll Highway Commission v. Korzen, *supra*. A later decision by the same Illinois Supreme Court, Application of Robert G. Skidmore, 75 Ill. 2d 33 (1979), specifically states that:

We consider next the Authority's contention that the property is exempt because it is State property. We agree with the appellate court that this contention is without merit. (47 Ill.App.3d 954, 956, 6 Ill.Dec. 99, 362 N.E.2d 734) for the reason that the property sought to be taxed is not State property, but a leasehold interest of Standard Oil. (Nabisco, Inc. v. Korzen (1977), 68 Ill.2d 451, 12 Ill.Dec. 122, 369 N.E.2d 829.) Concerning the contention that because the oases are a part of the Authority's contemplated public service and function the leasehold interest is exempt, we hold, as did the appellate court, that in enacting the amendment the General Assembly intended "to negate the effect of the decision in Illinois State Toll Highway Commission v. Korzen." 47 Ill.App.3d 954, 6 Ill.Dec. 99, 101, 362 N.E.2d 736.

Therefore the court specifically found that the toll highway oases were taxable as leasehold interests of Standard Oil. Similarly, at issue herein, are taxable leasehold interests of Midcoast.

One of the guiding principles for the National Airport System is that "Airports should be affordable to both users and Government relying primarily on user fees and placing minimal burden on the general revenues of local, state, and Federal Government." (Applicant's Ex. B) Were I to grant Midcoast's motion, it would place an additional burden on the local and state governments, in that additional tax dollars would not be available for the services provided by those entities. In addition, I would clearly be giving a commercial benefit to a for-profit entity, Midcoast, which is in competition with other similarly situated for-profit entities, which may or may not be operating on otherwise tax-exempt land. Midcoast uses the properties for its own commercial purposes and imposes its own economic standards. It used its leaseholds for its own for-profit commercial business.

Summary Judgment is appropriate where there are no genuine issues of material fact. Summary Judgment is recognized as a drastic remedy that is appropriate only where the movant's right is clear and free from doubt. Vicorp Restaurants v. Corinco Insulating Co., 222 Ill. App. 3d 518, 525 (1st Dist. 1991) *leave to appeal denied*, 144 Ill. 2d 643 (1992) The purpose of summary judgment procedure is to determine where there are any genuine issues of material facts between the parties. Vallejo v. Mercado, 220 Ill. App. 3d 1, 10 (2nd Dist. 1991) Summary judgment should be granted only if the pleading, dispositions, admissions and affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Dash Messenger Service, Inc. v. Hartford Insurance Co., 221 Ill. App. 3d 1007 (1st Dist. 1991) *leave to appeal denied* 143 Ill. 2d 637 (1992)

In this matter, the facts at issue are not disputed . (Tr. pp. 36-37) Midcoast leases parcels of land owned by Bi-State and has erected hangars on those properties. The St. Clair Board of Review assessed leaseholds and taxes on Midcoast's interests. There is no exclusion from property taxation and no public purpose doctrine to exempt the leaseholds from taxation. The plain language of the statute found at 35 **ILCS** 200/9-195 establishes that Midcoast owes the assessed taxes.

For the foregoing reasons, it is recommended that the Department's Motion for Summary Judgment be granted and the Applicant's Motion for Summary Judgment be denied.

Barbara S. Rowe
Administrative Law Judge
Date: July 12, 2006