

PT 06-29
Tax Type: Property Tax
Issue: Educational Ownership/Use

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

THE DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS)	
)	Docket # 04-PT-0065
v.)	PIN 14-33.0-402-001
)	
SPRINGFIELD SCHOOL DISTRICT #186)	Tax Year 2004
)	
Applicant)	

RECOMMENDATION FOR DISPOSITION

Appearances: Kent Steinkamp, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; J. Patrick Joyce of Brown, Hay & Stephens, LLP for Springfield School District #186.

Synopsis:

This case concerns whether a parcel of property located in Sangamon County that is owned by Springfield School District #186 (“applicant”) is exempt from taxes for the year 2004. The applicant alleges that the property qualifies for an exemption under either section 15-35(e), section 15-135, or section 15-60 of the Property Tax Code (35 ILCS 200/1-1 *et seq.*). The first two sections apply to property owned by a school district, and the third section applies to property owned by a taxing district. The Department of Revenue (“Department”) contends that the property does not qualify for an exemption

because it is leased or otherwise used with a view to profit. The applicant timely protested the Department's decision to deny the exemption, and an evidentiary hearing was held. The parties have stipulated that the applicant is the owner of the property but disagree concerning which exemption provision applies to this case and whether the property is used with a view to profit. For the following reasons, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. The property at issue is known as the Hay-Edwards property and is approximately an entire city block located in Springfield. The property contains two separate buildings (Hay School and Edwards School) that are connected by a common gymnasium. The buildings are approximately 90 to 100 years old. (Tr. p. 52)
2. In the mid 1990's the applicant realized that the buildings needed to be renovated to comply with the American with Disabilities Act ("ADA") and other legislative enactments. The applicant sold bonds in the amount of approximately \$6 million to finance the renovations. (Tr. pp. 53-54)
3. After studying the project, the applicant's architects determined that it was cheaper to build a new school building rather than renovate the Hay-Edwards school. The applicant could use the bond proceeds to build a new school if it took an old school out of service. (Tr. p. 54)
4. The applicant decided to build a new school and intended to sell the Hay-Edwards property. In 1997, the applicant submitted the sale of the school to a

sealed-bid type of process. The applicant did not receive any bids from this process. (Tr. pp. 54-55)

5. The applicant tried the sealed-bid process a second time, and this time the applicant received one bid in the amount of \$535,190. This bid was from Hay Edwards Associates, L.L.C. (“developer”) and was enhanced with a proposal to renovate the property through a financing arrangement with Public Asset Services Corporation (“PASC”), an Illinois not-for-profit corporation. (App. Ex. #19; Tr. pp. 55-56)
6. Legal title to the parcel at issue was transferred to PASC by the applicant pursuant to a financing arrangement in the same manner as described in Cole Hospital, Inc. v. Champaign County Board of Review, 113 Ill. App. 3d 96 (4th Dist. 1983). (Stip. #1)
7. As in the Cole case, transfer of legal title to the parcel under consideration in this matter did not transfer effective ownership from the applicant herein for purposes of this property tax exemption application. The applicant is the owner of the subject parcel for all relevant periods and for all issues relevant to real property tax exemption in Illinois. (Stip. #2)
8. On May 15, 2002, the applicant entered into a Lease Purchase Agreement (“Agreement”) with PASC. Contemporaneously with the Agreement, the applicant conveyed title to the property to PASC, and PASC agreed to lease the property to the applicant. The Agreement ends on August 15, 2023, unless it is previously terminated or extended for a period that shall not exceed two years. (App. Ex. #2, p. 9; Tr. p 16)

9. PASC engaged the developer to rehabilitate the property, and Amalgamated Bank of Chicago (“Trustee”) executed Certificates of Participation (“Certificates”), which are analogous to bonds, to finance the remodeling of the property. PASC assigned its right to receive payments under the Agreement to the Trustee. (App. Ex. #5; Tr. pp. 16-17, 23-24)
10. The Certificates of Participation were sold to customers who were seeking federal tax-exempt income. The proceeds from the sale were deposited with the Trustee into project funds, which allowed PASC to pay for the improvements to rehabilitate the property as offices suitable for government use. (App. Ex. #8; Tr. pp. 16-17, 28-29)
11. The applicant then subleased the property to the Department of Central Management Services (“CMS” or “State”) for the use of the property by the Department of Human Services. (App. Ex. #7)
12. The applicant pledged its right to receive the rental income under the sublease to the Trustee. The applicant directed CMS to pay the rent directly to the Trustee. (App. Ex. #9, #15; Tr. p. 29)
13. PASC granted to the Trustee a mortgage on the property to secure the Certificates issued. To secure the receipt by the Trustee of the rent payments, the applicant granted to the Trustee a security interest in its revenues and its rights under the development agreement, management agreement, and sublease. (App. Ex. #9, 11, pp. 2, 13)
14. The Agreement between the applicant and PASC provides that the applicant will pay rent that consists of certificate rent and additional rent. The certificate rent is

from Series A, B, or C Certificates of Participation. The additional rent includes all administrative expenses and all operation and maintenance expenses. (App. Ex. #2, p. 10; Tr. p. 16)

15. Operation and maintenance expenses are defined under the Agreement as “all expenses of operating, maintaining, repairing, insuring, managing and subleasing the Property, and paying any property taxes with respect to the Property, but it excludes any such costs payable by the State of Illinois under the State Sublease or by a Qualified Sublessee under a Qualified Replacement Sublease.” (App. Ex. #2, p. 4)
16. The Agreement provides that “[the applicant] shall use its best efforts to cause the Property to be exempt from any real property or other taxes.” The Agreement also provides that the applicant shall pay all taxes and special assessments of any type. (App. Ex. #2, p. 15)
17. The Agreement provides that if CMS terminates the sublease, the applicant will “use its best efforts to sublease the Property under a Qualified Replacement Sublease.” (App. Ex. #2, p. 14)
18. The rent under the sublease was structured to be sufficient to pay off the Certificates and to pay the operating costs not paid by CMS under the sublease. (App. Ex. #11, p. 2; Tr. p. 26)
19. The resolution regarding the renovation of the property that was adopted by the applicant at the School Board meeting on June 4, 2001 states that the rental is “sufficient to defray all expenses in connection with the renovation and ongoing management, maintenance, and administration of the Facility.” (App. Ex. #19)

20. The sublease is the sole source of revenue to repay the Certificates of Participation. (Tr. p. 37)
21. Upon the expiration of the term of the Agreement and payment in full of the Series A Certificates, the applicant has the option to purchase the property for \$10. PASC deposited with the Trustee a quit claim deed conveying the property to the applicant, and the Trustee will deliver the deed upon payment of the Certificates. (App. Ex. #2, p. 13)
22. The lease agreement between the applicant and CMS for the use of the property by the Department of Human Services is for a term of 10 years beginning April 5, 2003. The lease may be renewed for one successive period of 10 years. (App. Ex. #7)
23. CMS agreed to pay \$16.95 per square foot for rent during the first year. The total square footage is 61,000, and the total annual rent for the first year is \$1,033,950. The rent increases each year by 2%, including during the renewal period. (App. Ex. #1, Ex. R)
24. CMS has the option of terminating the lease on the fifth anniversary date of the commencement of the lease or the fifth anniversary of the commencement of any renewal term. The lease is also subject to termination without penalty in any year for which the General Assembly fails to make an appropriation to pay the rent or other obligations, or a Federal Funding source is lost. (App. Ex. #7, p. 4)
25. The provision of the lease regarding real estate taxes provides as follows:

In the event that real estate taxes and assessments (if any) are levied against the demised property, the Tenant shall be responsible for the real estate taxes and assessments in their entirety. If during the term of the lease, the General Assembly, or any other governmental body enacts

legislation the effect of which is to reduce the property taxes on the lease property, the tenant shall be entitled [sic] to a reduction proportional to any such reduction in taxes. The additional rent shall be payable within 60 (sixty) days following the receipt by Tenant of Landlord's real estate tax bill. The property is now exempt. (App. Ex. #7, Ex. R)

26. The applicant entered into the financing arrangement to defray the cost of renovating the building. (Tr. p. 62)
27. The applicant currently has inadequate administrative facilities that are at different locations. The renovated buildings are centrally located within the school district and may provide a site to consolidate the administrative facilities in the future. (Tr. p. 59)
28. The last classes held in the school buildings were for the '98/'99 school year. The State began occupying the buildings in 2003. (Tr. p. 64)
29. The applicant projected its net income that will be realized over the 20-year term of the financing arrangement. The applicant estimates that it will sustain a cumulative loss until the 16th year, during which it will sustain income in the amount of \$70,800. During the 20th year, it expects the cumulative income to be \$2,205,100. The positive cash flow after the 16th year will go into the applicant's general fund. (App. Ex. #16; Tr. pp. 35-36, 72)

CONCLUSIONS OF LAW:

Article IX, section 6 of the Illinois Constitution of 1970 authorizes the General Assembly to grant property tax exemptions in limited circumstances 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.

Pursuant to this constitutional authority, the General Assembly enacted section 15-35 of the Property Tax Code, which provides as follows:

Schools. All property donated by the United States for school purposes, and all property of schools, not sold or leased or otherwise used with a view to profit, is exempt, whether owned by a resident or non-resident of this State or by a corporation incorporated in any state of the United States. Also exempt is:

(a) property of schools which is leased to a municipality to be used for municipal purposes on a not-for-profit basis;

(b) property of schools on which the schools are located and any other property of schools used by the schools exclusively for school purposes, * * *;

(c) property donated, granted, received or used for public school, college, theological seminary, university, or other educational purposes, whether held in trust or absolutely;

(d) in counties with more than 200,000 inhabitants which classify property, property (including interests in land and other facilities) on or adjacent to (even if separated by a public street, alley, sidewalk, parkway or other public way) the grounds of a school, if that property is used by an academic, research or professional society, institute, association or organization which serves the advancement of learning in a field or fields of study taught by the school and which property is not used with a view to profit;

(e) **property owned by a school district.** The exemption under this subsection is not affected by any transaction in which, for the purpose of obtaining financing, the school district, 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 school district a right to use, control, and possess the property. In the case of a conveyance of the property, the school district must retain an option to purchase the property at a future date or, within the limitations period for reverts, the property must revert back to the school district.

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

- (A) the right of the school district to use, control, and possess the property is terminated;
- (B) the school district no longer has an option to purchase or otherwise acquire the property; and
- (C) there is no provision for a reverter of the property to the school district within the limitations period for reverters.

(2) Pursuant to Sections 15-15 and 15-20 of this Code, the school district shall notify the chief county assessment officer of any transaction under this subsection. The chief county assessment officer shall determine initial and continuing compliance with the requirements of this subsection for tax exemption. Failure to notify the chief county assessment officer of a transaction under this subsection 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.

(3) No provision of this subsection shall be construed to affect the obligation of the school district to which an exemption certificate has been issued under this Section from its obligation under Section 15-10 of this Code to file an annual certificate of status or to notify the chief county assessment officer of transfers of interest or other changes in the status of the property as required by this Code.

(4) The changes made by this amendatory Act of The 91st General Assembly are declarative of existing law and shall not be construed as a new enactment; and

(f) in counties with more than 200,000 inhabitants which classify property, property of a corporation, which is an exempt entity under paragraph (3) of Section 501(c) of the Internal Revenue Code or its successor law, used by the corporation for the following purposes: (1) conducting continuing education for professional development of personnel in energy-related industries; (2) maintaining a library of energy technology information available to students and the public free of charge; and (3) conducting research in energy and environment, which research results could be ultimately accessible to persons involved in education. 35 ILCS 200/15-35 (emphasis added).

The applicant argues that its property is exempt under subsection (e) of section 15-35 because the property is owned by a school district. The applicant notes that this subsection does not contain the same qualifying language prohibiting the sale, lease or

use of the property with a view to profit that is contained in the first paragraph. The applicant maintains that this qualifying language does not apply to subsection (e).

In the applicant's view, property owned by a school district is exempt from tax regardless of whether that property is leased or otherwise used with a view to profit. The applicant asserts that if the General Assembly intended the language "not sold or leased or otherwise used with a view to profit" to apply to each of the subsections, including (e), it would have included similar language in each subsection like it did in subsections (a) and (d). The applicant contends that the Illinois Constitution makes a clear distinction between property owned by school districts and other property that is used exclusively for school purposes. According to the applicant, the same distinction is made by the legislature in section 15-35, and property owned by a school district should be exempt.

In response, the Department relies upon the exemption provision found in section 15-135, which provides as follows:

School districts and community college districts. All property of public school districts or public community college districts not leased by those districts or otherwise used with a view to profit is exempt. 35 ILCS 200/15-135.

The Department states that the language in this section seems to contradict the broad declaration in section 15-35(e), and the most harmonious and economic way to read these sections is to read section 15-135 as modified by section 15-35(e). The Department believes the modification is a statutory avenue for providing financing to an exempt entity. The Department argues that the primary purpose of section 15-35(e) is to allow a transfer of title to a non-exempt entity with an immediate leaseback so that actual ownership is with the exempt entity. According to the Department, the language in subsection (e) is a specialized codification of the result in Cole Hospital, *supra*.

An argument that is similar to the one raised by the applicant was rejected by the court in Swank v. Department of Revenue, 336 Ill. App. 3d 851 (2nd Dist. 2003). In that case, the issue was whether the “used with a view to profit” language in the first paragraph of section 15-35 applied to subsection (c) of that provision. The court found that subsection (c) cannot be read consistently with section 15-35 unless it is read in conjunction with that language. Otherwise, subsection (c) largely subsumes the exemption in the first paragraph and substantially diminishes its effect. Swank, *supra* at 858. To read subsection (c) without the “view to profit” language would allow property that is used for educational purposes and with a view to profit to be exempt. This would have the effect of mitigating the “view to profit” exclusion of section 15-35. *Id.* The court found that the qualifying language in the first paragraph applies to subsection (c).

For similar reasons, the qualifying language in the first paragraph applies to subsection (e) as well. To allow property owned by a school district to be exempt even if it is used with a view to profit would mitigate the effect of the exclusion in the first paragraph and mitigate the effect of the exemption provision found in section 15-135. As the court stated in Swank, a statute should be evaluated as a whole, with each provision construed in connection with every other section. *Id.* (citing Paris v. Feder, 179 Ill. 2d 173, 177 (1997)). In section 15-135, the legislature clearly intended to allow the exemption for property owned by a school district only if it is not leased or otherwise used with a view to profit.¹

The applicant claims that even if it is assumed that in order to qualify for the exemption the property cannot be used with a view to profit, the property in this case is

¹ During the hearing, the applicant admitted that it owns another parcel of property that is not at issue in this case and is not exempt. (Tr. p. 76)

still exempt because it is not used with a view to profit. The applicant maintains that the lease between the applicant and CMS was not entered into with a view to profit, but instead was part of a complex financing transaction that allowed the applicant to renovate the building to meet building code requirements. The applicant argues that the lease also allowed it to retain a reversionary interest in the property and eliminated the previous burdens of owning a vacant building. According to the applicant, the lease allowed it to finance renovations to the property that it otherwise had no way of financing.

The applicant admits that it may recognize a gain in the 16th year of the 20-year lease. The applicant states, however, that it unsuccessfully attempted to sell the property, and the transaction was the only option to both renovate the building and eliminate the obligation of maintaining a vacant building. The transaction also allowed the applicant to maintain the historic nature of the building. The applicant claims that it was under pressure from the local community to do something with the building to eliminate the community's on-going tax liability. (App. Brief p. 11)

The applicant contends that the building is currently being used by the State for public purposes (State offices), and the State does not conduct any profit-making activities on the property. The applicant states that in Children's Development Center, Inc. v. Olson, 52 Ill. 2d 332 (1972), the court found that if property that is otherwise exempt is leased and the primary use of the property serves a tax exempt purpose, then the property will still be exempt even though it produces incidental income. The applicant notes that it does not receive the rental payments from the State because those payments are made directly to the Trustee. According to the applicant, the possibility of positive cash flow 16 years later does not make the entire lease one with a view to profit.

The applicant claims that because it owns the property and the State uses the property for public purposes, the property should be exempt.

The applicant argues that at a minimum, in order for a lease to be with a view to profit, there must be income generated. In the applicant's view, neither the applicant nor the State receives income from the lease. The applicant contends that the instant case is distinguishable from the case of Village of Oak Park v. Rosewell, 115 Ill. App. 3d 497 (1st Dist. 1983), where the court found that property leased by a church to a municipality was not exempt. In Village of Oak Park, income was generated from the lease arrangement. The applicant maintains that in the present case, all rental payments are made to the Trustee, and neither the applicant nor the State receive any income generated from the lease arrangement. The applicant also contends that the case of Board of Education of Glen Ellyn Community Consolidated School District #89 v. Department of Revenue, 356 Ill. App. 3d 165 (2nd Dist. 2005) is distinguishable because the court found the property was not exempt on the basis that the school district was not the owner of the property and the lease was one with a view to profit. The applicant notes that the parties have stipulated that the applicant owns the property, and, unlike the lease in Glen Ellyn, the parties in this case stipulated that the lease constitutes a financing device as set forth in Cole Hospital, *supra*.

In response, the Department argues that nothing in the lease ties it to the financing arrangement. The Department claims that the lease is a standard, arms-length agreement, and although the financing arrangement is for 20 years, the lease may be terminated in any year for which the General Assembly fails to make an appropriation to pay the rent. The Department asserts that several features of the arrangement insulate the financier

from loss if the lease is terminated. According to the Department, the property itself is sufficient to collateralize the loan because it is a fully maintained office building that the applicant intends to some day use as its headquarters.

The Department contends that the bond insurance policy also insulates the financier from loss; the bond insurer will pay the bonds to the ultimate investor if there is an interruption in payment. The Department also states that the financing arrangement does not rely on the lease as an essential ingredient. Rather, the agreement is binding on the applicant and requires the applicant to use its best efforts to sublease the property if the State terminates or fails to renew the lease. (App. Ex. #2, p. 14) The Department claims that the applicant could make the payments to the trust fund itself. The Department believes that the sale/leaseback is one transaction, and the lease with the State is a separate transaction.

In addition, the Department argues that the lease with the State is one with a view to profit. The Department claims that the use of the profits from a lease to advance the exempt purposes of the owner does not allow the property to qualify for the exemption. The Department refers to the case of Turnverein 'Lincoln' v. Board of Appeals of Cook County, 358 Ill. 135 (1934), which concerned property owned by a non-profit corporation that leased it to tenants for business purposes. The applicant argued that the property was not leased with a view to profit because the property was owned by a non-profit corporation and the rental income was offset by operating expenses. The court found as follows:

The mere fact that property is owned by a nonprofit corporation affords no basis for exempting the property from taxation. Concerning the second ground urged, that the income from the stores was offset by the operating expenses, it need only be observed that, if property, however owned, is let

for a return, it is used for profit, and, so far as its liability to the burden of taxation is concerned, it is immaterial whether the owner actually makes a profit or sustains a loss. Turnverein at 144.

The applicant responds by stating that the lease with the State was part of the entire financing transaction as contemplated by Cole Hospital, *supra*, and the improvements would never have been made nor the obligations issued without the prior commitment of the State to the revenue stream. In the applicant's view, despite the fact that there were two leases involved in the transaction, both leases are part of one entire transaction, and the lease with the State is an integral part of the transaction.

The applicant argues that the fact that there was other security for the performance of the applicant's repayment obligation has no bearing on whether the lease with the State is one with a view to profit. In the applicant's view, the rental payments under the lease were a critical part of the financing transaction, and as is true for any large commercial loan transaction, the lender sought as much security as it could to insure the debt was repaid. According to the applicant, the lease is not with a view to profit simply because the payments are used to meet the obligations to PASC. The applicant notes that incidental income does not cause a lease to be one with a view to profit. See Children's Development Center, *supra*. The applicant claims that the purpose of the lease is for financing, and the incidental income used to pay for the financing should not result in the lease being one with a view to profit. The applicant believes that the Turnverein case is distinguishable because in that case there was no dispute that the commercial tenants were operating their businesses with a view to profit. In the present case, the property is being leased to the State, not a commercial enterprise, and the State is not using the property with a view to profit.

It is well-established that property tax exemption provisions are strictly construed in favor of taxation. People ex rel. County Collector v. Hopedale Medical Foundation, 46 Ill. 2d 450, 462 (1970). The party claiming the exemption has the burden of proving by clear and convincing evidence that it is entitled to the exemption, and all doubts are resolved in favor of taxation. *Id.*; City of Chicago v. Department of Revenue, 147 Ill. 2d 484, 491 (1992); Evangelical Hospitals Corporation v. Department of Revenue, 223 Ill. App. 3d 225, 231 (2nd Dist. 1992).

The applicant has failed to present clear and convincing evidence to show that the property is not used with a view to profit. The evidence concerning the \$535,190 bid is not clear. The minutes of the School Board meeting on June 18, 2001, when the resolution regarding the renovation of the building was adopted, state as follows:

The first time it was put up for bid [for the sale of the property], no bids were received. The second time we received a bid of \$535,190. In this resolution being presented for approval, Dr. Hill [the superintendent] said the District will receive \$535,190 in cash. In addition, the District will maintain ownership of the property zoned for commercial buildings. The building will be free of environmental concerns and remodeled. * * * Additionally, the District will have the right to an annual cash flow after the bonds are paid. * * * The developer will advance all cash to balance between the proceeds and the amount of the bonds. (App. Ex. #19)

In the Lease Purchase Agreement, it states as follows:

The District issued requests for proposals to purchase the property. Hay Edwards Associates L.L.C., an Illinois limited liability company (the "Turn-Key Developer"), was the winning bidder at a price of \$535,000. The Turn-Key Developer has proposed to have the school acquired by the Lessor [PASC] from the District at the bid price stated above and to have the Lessor engage the Turn-Key Developer to cause the property to be remodeled as offices suitable for governmental use * * *. The obligations of the Turn-Key Developer so to remodel the property on a turn-key basis are set forth in a Turn-Key Development Agreement being entered into between the Lessor and the Turn-Key Developer * * *. Under the Turn-Key Development Agreement, the Turn-Key Developer has provided a guaranteed price for the lease purchase by the District of the remodeled

building. The Turn-Key Developer has also agreed in the Turn-Key Development Agreement to advance, for the benefit of the District, amounts to cover certain costs due to delay of completion of the remodeling, as well as necessary, but unanticipated, changes in the scope of the work.² (App. Ex. #2)

The \$535,190 is a significant amount of money that was not referred to by the applicant during the hearing. It is unclear why the developer paid this amount to the applicant and whether it should be included as income to the applicant. This money is not included as income on the applicant's exhibit concerning its projected net income over the 20-year term of the financing arrangement. (App. Ex. #16)

Also, the applicant should not have included one of the deductions that it shows on the exhibit concerning its projected net income. For each year during the 20-year term, the applicant shows the rental income received minus the estimated amount of the operating expenses. *Id.* The exhibit also includes a deduction for the interest on the Certificates of Participation. The exhibit then shows a deduction titled "RE Tax Losses." This was explained as "the School District's portion of the tax revenue they wouldn't be receiving from the facility." (Tr. p. 35) The applicant's attorney then asked, "Provided there was an exemption, correct?" The response was "Correct." (Tr. p. 36) The applicant has taken a deduction for the amount of taxes that the school district would not be receiving if the property were exempt. In other words, the applicant contends that the property should be exempt because it is sustaining a loss on the property, and the applicant claims that the reason it is sustaining a loss is due in part because the property is exempt.

² The applicant has provided all of the "basic documents" related to the financing transaction except the Turn-Key Development Agreement. (See App. Ex. #1, p. 2)

Despite the applicant's flawed reasoning and the fact that the projected income from the property is not exactly clear, even if it is assumed that the applicant will sustain a loss during some of the years of the 20-year term, the applicant still derives an economic advantage from the lease of the building. The lease gives the applicant the funds to maintain the financing agreement that was necessary to renovate the property, and the lease provides the applicant with an annual cash flow after the Certificates are paid. The rent from CMS provides the sole source of revenue to pay the Certificates, and it was structured to be sufficient to pay off the Certificates and the operating costs not paid by CMS. If the CMS lease is terminated, the applicant will use its best efforts to sublease the property, and there is no restriction on the type of entity that may sublease the property. The fact that the applicant assigned its right to receive the rent to the Trustee does not change the fact that the applicant receives an economic benefit from the lease. Even if the applicant's projected net income analysis is accepted, the applicant's cumulative net income from the lease over the 20-year period is over \$2 million. This may have been the only option the applicant had for obtaining financing to renovate the property, but it was clearly an option that was economically beneficial to the applicant.

The applicant had the building zoned for commercial purposes and intended to use the space for governmental offices. The applicant was able to build a new school with its bond proceeds only if it took an old school out of service, and the Hay-Edwards building is no longer being used for school purposes. Whether the building will be used for the applicant's administrative offices in 20 years is speculative at this point. The applicant had the building remodeled in order for it to be used for generic office and

commercial purposes and used a financing method that paid for the commercial uses without burdening the applicant's own funds.

Furthermore, the use of the property by the State does not entitle the property to an exemption. Property that is owned by the State is exempt under section 15-55 of the Code (35 ILCS 200/15-55), but a separate exemption does not exist for property used by the State. Similar facts are found in Village of Oak Park, *supra*, where the property was leased from a religious organization to a municipality. The court found, *inter alia*, that the exemption for municipalities turns solely on ownership of the property, and an exemption was not warranted simply on the basis that the land was used by a municipality. Village of Oak Park, 115 Ill. App. 3d at 501. For the same reasons, an exemption on the basis that the property is used by the State cannot be allowed.

The applicant believes that the Village of Oak Park case is distinguishable because in that case income was generated from the lease agreement. The court found that "the property in question was leased to the Village with a view to profit rather than to furthering some religious purpose of the Church." *Id.* at 500. In the present case, income is generated from the lease agreement as well, and the applicant has not established that the property was leased to the State without a view to profit.

The applicant has also referred to Children's Development Center, *supra*, where the court found that property leased from a religious organization to a charitable organization was exempt. The leased property was used to provide programs for educationally handicapped children. The court stated, "it is the primary use to which the property is devoted after the leasing which determines whether the tax-exempt status continues." Children's Development Center, 52 Ill. 2d at 336. In that case, after the

leasing, the primary use of the property was to serve the charitable purpose of the lessee.

Id. The Village of Oak Park court distinguished Children's Development Center on the basis that the lessee in Village of Oak Park was a municipality that received an exemption based only on ownership, while the lessee in Children's Development Center was a charitable organization that received an exemption based on both ownership and use. The present case is distinguishable on the same basis. Unlike the lessee in Children's Development Center, the State is entitled to an exemption based only on ownership.

The applicant also claims the property is exempt under section 15-60, which provides as follows:

Taxing district property. All property belonging to any county or municipality used exclusively for the maintenance of the poor is exempt, as is **all property owned by a taxing district 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, or municipality, with the ground on which the buildings are erected;
- (c) all property owned by any municipality located within its incorporated limits. Any such property leased by a municipality shall remain exempt, and the leasehold interest of the lessee shall be assessed under Section 9-195 of this Act, (i) for a lease entered into on or after January 1, 1994, unless the lease expressly provides that this exemption shall not apply; (ii) for a lease entered into on or after the effective date of Public Act 87-1280 and before January 1, 1994, unless the lease expressly provides that this exemption shall not apply or unless evidence other than the lease itself substantiates the intent of the parties to the lease that this exemption shall not apply; and (iii) for a lease entered into before the effective date of Public Act 87-1280, if the terms of the lease do not bind the lessee to pay the taxes on the leased property or if, notwithstanding the terms of the lease, the municipality has filed or hereafter files a timely exemption

petition or complaint with respect to property consisting of or including the leased property for an assessment year which includes part or all of the first 12 months of the lease period. The foregoing clause (iii) added by Public Act 87-1280 shall not operate to exempt property for any assessment year as to which no timely exemption petition or complaint has been filed by the municipality or as to which an administrative or court decision denying exemption has become final and nonappealable. For each assessment year or portion thereof that property is made exempt by operation of the foregoing clause (iii), whether such year or portion is before or after the effective date of Public Act 87-1280, the leasehold interest of the lessee shall, if necessary, be considered omitted property for purposes of this Act;

(c-5) Notwithstanding clause (i) of subsection (c), all property owned by a municipality with a population of over 500,000 that is used for toll road or toll bridge purposes and that is leased for those purposes to another entity whose property is not exempt shall remain exempt, and any leasehold interest in the property shall not be subject to taxation under Section 9-195 of this Act;

(d) all property owned by any municipality located outside its incorporated 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, or 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 municipality; 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.

All property owned by any municipality outside of its corporate limits is exempt if used exclusively for municipal or public purposes.

For purposes of this Section, "municipality" means a municipality, as defined in Section 1-1-2 of the Illinois Municipal Code. 35 ILCS 200/15-60 (emphasis added).

The applicant contends that the property is entitled to an exemption under this section because it is owned by a taxing district, is being held for future expansion or development, and is being used for public purposes. The applicant notes that "taxing district" is defined as "[a]ny unit of local government, school district or community

college district with the power to levy taxes.” 35 ILCS 200/1-150. The applicant states that the School Code gives it authority to levy taxes and that it is clearly a taxing district. The applicant claims that when it receives possession of the property, it intends to use the property for administrative facilities, and so it is being held for future expansion or development. Finally, the applicant maintains that because the State is currently using the property for office space, the property is being used for public purposes.

The Department argues that an entity may only qualify for exemption under the provision of the statute that specifically applies to the entity by category, if such a provision exists. The Department claims that it is presumed that by enacting provisions with specific application subject to qualifiers, such as the prohibition against leases with a view to profit, the legislature intended to grant the exemption only under the conditions specified. According to the Department, allowing the applicant to avoid conforming to specific conditions for obtaining an exemption by jumping to a more general provision would ignore the general structure of the exemption provisions and ignore logic. The Department believes that the legislature intended to permit exemptions for school districts only under section 15-135.

The applicant responds by stating that it is a taxing district, and it qualifies for the exemption granted to taxing districts. The applicant contends that section 15-60 does not provide a general “catch-all” exemption as the Department claims. The applicant argues that section 15-60 provides a separate exemption for property that is owned by a taxing district and is held for future expansion or development. The applicant believes that there is no reason why section 15-60 and section 15-135 cannot both apply to a school district that is also a taxing district.

The “undisputed rule is that specific statutory provisions control as against general provisions on the same subject, appearing either in the same act or in other acts.” People ex rel. Oller v. Cairo & Theses R. Co., 364 Ill. 329 (1936). Each section of a statute should be construed with every other section to produce a harmonious whole. Land v. Board of Education of the City of Chicago, 202 Ill. 2d 414, 422 (2002). Words and phrases should be interpreted in light of other relevant portions of the statute so that no term is rendered superfluous or meaningless. *Id.*

Section 15-135 applies to school districts, which is a specific type of taxing district. In order to construe sections 15-60 and 15-135 harmoniously, the property of a school district may not qualify for the exemption if it is leased or otherwise used with a view to profit. Allowing an exemption for property of a school district that is used with a view to profit would render section 15-135 meaningless.

Recommendation:

For the foregoing reasons, it is recommended that the property does not qualify for an exemption.

Linda Olivero
Administrative Law Judge

Enter: August 11, 2006