

PT 08-19
Tax Type: Property Tax
Issue: Grounds for Burying the Dead

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

NEW FOREST HOME CEMETERY, LLC,

APPLICANT

v.

THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS

Docket No. 07-PT-0088

Real Estate Tax Exemption

For 2006 Tax Year
P.I.N. 15-13-300-018-0000
(part of)

Cook County Parcel

Kenneth J. Galvin
Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Mr. John K. Kallman, on behalf of New Forest Home Cemetery, LLC; Ms. Paula Hunter, Special Assistant Attorney General, on behalf of The Department of Revenue of the State of Illinois.

SYNOPSIS:

This proceeding raises the issue of whether an office building, a proportionate amount of land and the parking used for the office building, located on Cook County Parcel, Property Index Number 15-13-300-018-0000, qualifies for exemption from 2006 real estate taxes under 35 ILCS 200/15-45, which exempts all property used exclusively for cemetery purposes.

The controversy arises as follows: On June 25, 2007, New Forest Home Cemetery (hereinafter "New Forest") filed an Application for Non-homestead Property Tax

Exemption with the Cook County Board of Review (hereinafter the “Board”) for four Cook County P.I.N.S. The Board reviewed New Forest’s Application and subsequently recommended to the Illinois Department of Revenue (hereinafter the “Department”) that all four P.I.N.S be granted an exemption beginning July 19, 2006 through December 31, 2006, equal to 45% of the 2006 assessment year. On September 13, 2007, the Department issued a Non-homestead Property Tax Exemption Certificate (Docket No. 06-16-1464, County Reference No. 88249) granting an exemption for 45% of the 2006 assessment year for Cook County P.I.N.S. 15-13-300-019-0000, 15-13-30-020-0000 and 15-14-400-010-0000, which are not at issue in the proceeding, and also granting an exemption for 45% of the 2006 assessment year for P.I.N. 15-13-300-018-0000 “except for the office building, a proportionate amount of land and the parking area.” Dept. Ex. No. 1

On November 6, 2007, New Forest protested the denial of the exemption for the office building, land and parking area. An evidentiary hearing was held on this matter on August 20, 2008 with Mr. James Peters, General Manager of New Forest, testifying. At the evidentiary hearing, counsel for the Department stated that the Department was not objecting to the exemption of the office building, but only to the portion of the office building used for the selling of grave markers and monuments (hereinafter the “marker showroom”). Tr. pp. 8-9. Following submission of all evidence and a careful review of the record, including the “Taxpayer’s Trial Memorandum of Law” (hereinafter “App. Memo.”) and “Department’s Memorandum in Response” (hereinafter “Dept. Resp.”), it is recommended that the office building, except for the portion of the office building used

for the marker showroom, be exempt from property taxes for 45% of the 2006 assessment year.

FINDINGS OF FACT:

1. Dept. Ex. No. 1 establishes the Department's jurisdiction over this matter and its position that the office building, a proportionate amount of land, and the parking area used for the office building, located on Cook County P.I.N. 15-13-300-018-0000, was not in exempt use in the 2006 assessment year. Tr. pp. 10-11; Dept. Ex. No. 1.
2. New Forest is approximately 268 acres. In the 1960's, Forest Home Cemetery, on the east side of the Des Plaines River, combined with Waldheim Cemetery, on the west side of the Des Plaines River, to form New Forest. Tr. pp. 13-14.
3. The office building is approximately 4,000 square feet. The "marker showroom" is approximately 788 square feet. Approximately 188 square feet are used for two public restrooms, an entryway and a closet. The area devoted to the marker showroom is approximately 600 square feet. Tr. pp. 17-18; App. Ex. C, D, I and J.
4. New Forest requires that families view a grave upon purchasing it. Families coming through the office building to meet the administrative staff for viewing the grave pass through the marker showroom. At this initial meeting, families are told that they receive a 10% discount if a marker is purchased within the first two weeks of passing. Tr. pp. 18-19.
5. Less than 10% of customers purchase markers at the initial meeting. Approximately 90% of New Forest's customers eventually buy markers. Approximately 85% of the markers in the cemetery are sold by New Forest. Certain sections of the cemetery

have regulations regarding markers. The regulations are described at the initial conference. Tr. pp. 20-21.

CONCLUSIONS OF LAW:

An examination of the record establishes that New Forest has not demonstrated, by the presentation of testimony, exhibits and argument, evidence sufficient to warrant exempting the marker showroom, located in the office building on Cook County P.I.N. 15-13-300-018-0000, from property taxes for the 2006 assessment year. In support thereof, I make the following conclusions.

Article IX, Section 6 of the Illinois Constitution of 1970 limits the General Assembly's power to exempt property from taxation as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The General Assembly may not broaden or enlarge the tax exemptions permitted by the constitution or grant exemptions other than those authorized by the constitution. Board of Certified Safety Professionals v. Johnson, 112 Ill. 2d 542 (1986). Furthermore, Article IX, Section 6 does not in and of itself, grant any exemptions. Rather, it merely authorizes the General Assembly to confer tax exemptions within the limits imposed by the constitution. Locust Grove Cemetery v. Rose, 16 Ill. 2d 132 (1959). Thus, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App. 3d 497 (1st Dist. 1983).

In accordance with its constitutional authority, the General Assembly enacted section 15-45 of the Property Tax Code which exempts all property used exclusively for cemetery purposes. “Property used exclusively for cemetery purposes includes cemetery grounds and improvements such as offices, maintenance buildings, mausoleums, and other structures in which human or cremated remains are buried, interred, entombed, or inurned and real property that is used exclusively in the establishment, operation, administration, preservation, security, repair, or maintenance of the cemetery.” 35 ILCS 200/15-45.

New Forest argues that the marker showroom should be exempt because “the sale of monuments is almost as central to the operation of the cemetery as is the burying of the dead.” “Many people desire monuments to honor the deceased.” App. Memo., p. 4. The cemetery exemption statute, 35 ILCS 200/15-45, exempts property that is used exclusively in the “operation” of the cemetery. According to New Forest, the sale and placement of monuments is “clearly” part of the “operation” of the cemetery. App. Memo., p. 4. The Department argues, on the other hand, that while a monument business is complimentary to and compatible with the business of a cemetery, it is not actually a part of the operation of the cemetery and nothing in the statute or its legislative history indicates that it was intended that property used to sell monuments should be exempt. Dept. Resp., p. 3.

I am unable to conclude that the sale of markers is necessary to the operation of a cemetery. New Forest would “operate” if markers were not sold in its office building. Whereas it may be convenient for grave markers to be sold in the office building, the cemetery exemption statute does not provide an exemption for convenience.

Additionally, it is clear that New Forest would exist and “operate” if markers were not sold on the cemetery grounds. There was testimony at the hearing that approximately 90% of New Forest’s customers eventually buy markers and that approximately 85% of the markers in the cemetery are sold by New Forest. Tr. pp. 20-21. Approximately 15% of the markers in the cemetery are purchased elsewhere. Tr. p. 26. As the figures indicate, New Forest’s customers are able to, and do, buy markers from companies not affiliated with New Forest. There was no testimony at the evidentiary hearing that markers are required by New Forest on all graves in the cemetery. Counsel for New Forest did not cite, and my research does not indicate, any Illinois statute, including in the Cemetery Care Act, 760 ILCS 100/1 *et seq.*, which requires that graves have markers.

There was no testimony at the evidentiary hearing as to whether the sale of markers in the marker showroom constitutes a for-profit business for New Forest. However, New Forest’s argument that the word “operation” in 35 ILCS 200/15-45 does not only include “non-commercial cemetery activities” leads me, reasonably, to believe that the sale of markers provides a profit to New Forest. App. Memo., p. 3. Exempting New Forest’s marker showroom would provide New Forest with an advantage not enjoyed by its competitors, who provide 15% of the markers in the cemetery.

This competitive advantage was recognized by the Illinois Supreme Court in The People v. Mt. Olive Cemetery Assn., 26 Ill. 2d 156 (1962). In Mt. Olive, a competitor, located across the street from Mt. Olive Cemetery, brought an action to determine whether Mt. Olive was authorized to engage in the sale of monuments and markers. *Id.* at 157. The Supreme Court noted that Mt. Olive was organized under the Business Corporation Act with its Articles of Incorporation authorizing the sale of monuments.

Mt. Olive was exempt from property taxes under Ill. Rev. Stat., ch. 120, par. 500.3 (1961), which exempted all land used exclusively for burying the dead. The Supreme Court noted that “[T]his latter exemption does not apply to property devoted to the monument business so as to give [Mt. Olive] an unfair economic advantage...” *Id.* at 158.

An “unfair economic advantage,” over all other businesses that operate to sell grave markers, would result if New Forest received an exemption for its marker showroom. Moreover, as the Department recognized in its Memorandum, the Illinois Legislature is presumed to have been aware of the Supreme Court’s opinion in Mt. Olive when it amended the cemetery exemption statute in 2002. Nothing in the amended statute or the legislative history of the amended statute indicates that the Legislature intended to change the Supreme Court’s interpretation that the cemetery exemption statute did not apply to the “monument business.” Had the Legislature intended to exempt the monument business, it clearly could have done so with the 2002 amendment. Significant changes were made in the amended statute, including the exemption of “offices,” which were not exempt under the earlier statute. Dept. Resp., p. 3.

It is well established in Illinois that a statute exempting property from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation. Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). Based on these rules of construction, Illinois courts have placed the burden of proof on the party seeking exemption, and have required such party to prove, by clear and convincing evidence, that it falls within the appropriate statutory exemption. Immanuel Evangelical Lutheran Church of Springfield v.

Department of Revenue, 267 Ill. App. 3d 678 (4th Dist. 1994). In determining whether property falls within the scope of an exemption, all debatable questions must be resolved in favor of exemption. Victory Christian Church v. Department of Revenue, 26 Ill App. 3d 919 (1st Dist. 1994).

Property tax exemptions are inherently injurious to public funds because they impose lost revenue costs on taxing bodies and the overall tax base. In order to minimize the harmful effects of such lost revenue costs, and thereby preserve the Constitutional and statutory limitations that protect the tax base, statutes conferring property tax exemptions are to be strictly construed in favor of taxation. People ex rel. Nordland v. Home for the Aged, 40 Ill. 2d 91 (1968). Great caution must be exercised in determining whether property is exempt so that only the limited class of properties meant to be exempt actually receives the exempt status that the Legislature intended to confer. Otherwise, any increases in lost revenue costs attributable to unwarranted application of the cemetery exemption statute will cause damage to public treasuries and the overall tax base. In this case, New Forest has failed to prove that the marker showroom falls within the class of properties meant to be exempt for cemetery purposes.

WHEREFORE, for all the above-stated reasons, it is my recommendation that the office building, a proportionate amount of land and the parking area located on Cook County P.I.N. 15-13-300-018-0000 be exempt from property taxes for 45% of the 2006 assessment year, except for the marker showroom and its proportionate land and parking area.

ENTER:

November 25, 2008

Kenneth J. Galvin
Administrative Law Judge