

PT 12-10

Tax Type: Property Tax

Issue: Educational Ownership/Use

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

---

---

ACHIEVEMENT CENTERS, INC.  
APPLICANT

v.

THE DEPARTMENT OF REVENUE  
OF THE STATE OF ILLINOIS

No. 11-PT-0001 (09-16-741)  
Real Estate Tax Exemption  
For 2009 Tax Year  
P.I.N. 18-20-200-036-0000  
Cook County Parcel

Kenneth J. Galvin  
Administrative Law Judge

---

---

**RECOMMENDATION FOR DISPOSITION**

**APPEARANCE:** Mr. John Alshuler, Special Assistant Attorney General, on behalf of the Department of Revenue of the State of Illinois; Mr. Daniel F. D'Attomo, Wilson & Wilson, on behalf of Achievement Centers, Inc.

**SYNOPSIS:**

This proceeding raises the issue of whether Cook County Parcel Index Number 18-20-200-036-0000 (hereinafter the "subject property") qualifies for exemption from 2009 real estate taxes under 35 ILCS 200/15-35, in which "all property of schools, not sold or leased or otherwise used with a view to profit" is exempted from real estate taxation.

The controversy arises as follows: On September 28, 2010, Achievement Centers, Inc. (hereinafter the "Center") filed a Real Estate Exemption Complaint for the

subject property with the Board of Appeals of Cook County (hereinafter the “Board”). The Board reviewed the Center’s complaint and subsequently recommended to the Illinois Department of Revenue (hereinafter the “Department”) that the requested exemption be denied. Dept. Ex. No. 1.

The Department accepted the Board’s recommendation in a determination dated November 24, 2010. This determination found that the subject property was not in exempt ownership or use in 2009. Dept. Ex. No. 1. On January 21, 2011, the Center filed a timely request for a hearing as to the denial and presented evidence at a formal evidentiary hearing on March 1, 2012, with Kathryn Fouks (hereinafter “Ms. Fouks”) presenting oral testimony. At the hearing, the parties stipulated that the subject property was used for school purposes. Tr. p. 9. Accordingly, the only issues for hearing are ownership of the property and whether the property was leased or used with a view to profit. Following submission of all evidence and a careful review of the record, it is recommended that the Department’s determination be affirmed.

**FINDINGS OF FACT:**

1. Dept. Ex. No. 1 establishes the Department’s jurisdiction over this matter and its position that the subject property was not in exempt ownership in 2009. Tr. pp. 9-10; Dept. Ex. No. 1.
2. The subject property was purchased on October 27, 1995, by Pinnacle Bank, as trustee, under a land trust agreement, number 11212, dated October 27, 1995. This agreement states that Kathryn Fouks has “100% of the entire beneficial interest under this trust, with full power to sell, assign, or transfer any or all part thereof.” Tr. pp. 12-14; App. Ex. Nos. 7 and 8.

3. The Center's "Financial Statements" for July 31, 2007 and 2008 state under "Note 4 – Related Party Transactions," that the Center "has entered into a building lease with a trust. The beneficiary and trustee of this trust was the sole shareholder of the Company." "Under the terms of the lease, during the years ended July 31, 2008 and 2007, the [Center] was obligated to make monthly lease payments of \$10,125 and in addition, is responsible for the real estate tax, utilities, repairs and maintenance of the facility." "During the year ended July 31, 2008 and 2007, rent payments amounted to \$111,375 and \$121,500, respectively, and real estate taxes amounted to \$37,149 and \$39,189, respectively." Tr. pp. 15-16, 23-24, 28; App. Ex. No. 13.
4. The Center was incorporated under the "Business Corporation Act" of Illinois on May 15, 1979. App. Ex. No. 9.
5. Ms. Fouks is principal of the Center and its sole shareholder. Tr. pp. 19, 28-29.

**CONCLUSIONS OF LAW:**

An examination of the record establishes that the Applicant has not demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exempting the subject property from 2009 real estate taxes. Accordingly, under the reasoning given below, the determination by the Department that the subject property does not qualify for exemption should be affirmed. 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 (1<sup>st</sup> Dist. 1983).

In accordance with its constitutional authority, the General Assembly enacted Section 15-35 of the Property Tax Code which exempts “all property of schools, not sold or leased or otherwise used with a view to profit.” 35 ILCS 200/15-35. Statutes granting tax exemptions are to be strictly construed, and all doubts regarding the tax-exempt status of property are resolved in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944). Moreover, the burden of proving the right to a property tax exemption is on the party seeking it, and it must be proved by clear and conclusive evidence. Winona School of Professional Photography v. Department of Revenue, 211 Ill. App. 3d 565 (1<sup>st</sup> Dist. 1991).

The Department denied the Center an exemption from property taxes because the property was not in exempt ownership or use in 2009. At the hearing, the parties stipulated that the subject property was used for school purposes. Tr. p. 9. The questions

to be decided then are whether the Center was the owner of the subject property in 2009 and whether the property was used or leased with a view to profit.

In People v. Chicago Title & Trust, 75 Ill. 2d 479, 493 (1979), the court held that the beneficiaries of a land trust were the true owners of property for purposes of real estate taxation because they had control of the property and the right to its benefits. Although the trustee held legal title to the land, the trustee lacked any other incidences of ownership. “A common sense definition of ‘owner’ as used in a tax statute must encompass the beneficiary of a land trust, because that beneficiary controls the purchase, sale, rental, management and all other aspects of land ownership.”

In the instant case, the Center leases the subject property from Ms. Fouks, as beneficiary under the land trust. Ms. Fouks holds all incidences of ownership in the property. The Trust Agreement states that Ms. Fouks has “full power to sell, assign or transfer any or all part thereof.” App. Ex. No. 8. None of the incidents of ownership were transferred to the Center in the lease. The lease is an “industrial building lease” form. The lease does not contain an option for the Center to purchase the subject property. Any additions or alterations to the subject property remain for the benefit of Ms. Fouks. According to paragraph 3 of the lease, the Center will not allow the premises to be used for any purpose other than a “private school without boarding,” and will not assign or sublet the lease without the written consent of Ms. Fouks. The right to choose when and if the property may be transferred is one of the most significant incidents of ownership. Coles-Cumberland Dev. v. Dept. of Revenue, 284 Ill. App. 3d 351 (4<sup>th</sup> Dist. 1996). Clearly, control of the property at issue including the right to transfer it, resides

with Ms. Fouks. I conclude that Ms. Fouks, as sole beneficiary of the land trust with all significant incidences of ownership, is the owner of the subject property.

The facts in the instant case are exactly on point with Swank v. Department of Revenue, 336 Ill. App. 3d 851, 854 (2d Dist. 2003). In Swank, the taxpayers were the sole beneficiaries of a land trust holding title to property leased to a for-profit school. The taxpayers were also the sole shareholders and directors of the school. Similarly, Ms. Fouks is the sole beneficiary of a land trust holding title to property leased to the Center, a for-profit school. Ms. Fouks is sole shareholder of the Center and also its principal. Tr. pp. 19, 28-29.

In Swank, the court was asked to determine whether properties “used with a view to profit,” even if used for educational purposes, are entitled to tax exemption under section 200/15-35 of the Property Tax Code. The Department’s position in Swank was that any property used with a view to profit, even if used for educational purposes, was excluded from the section 15-35 tax exemption. *Id.* at 857. The court held that section 15-35 excludes from tax exemption property held for profit, even if used for school purposes. The court stated explicitly that it declined “to extend tax exemption under section 15-35 to properties held for profit, even if they are used for educational purposes.” *Id.* at 863.

In addition, the Court “rejected” the taxpayer’s “argument that public policy supports tax exemption for private, for-profit property devoted to educational purposes.” The Court stated that “in this situation, plaintiffs are individual property owners and the sole shareholders of for-profit corporations that provide educational services.” “Thus, plaintiffs are using their property with a ‘view to profit,’ which prevents exemption under

section 15-35.” “Finally, plaintiffs are unable to cite any authority for their proposition that the legislature intended for-profit entities to receive tax exemptions under 15-35 of the Code.” As a result, the Court declined to interpret section 15-35 as providing tax exemption to property used by a for-profit corporation for educational purposes. *Id.* at 859.

The evidence in the instant case clearly shows that the property at issue is held with a view to profit. The Center was incorporated under the “Business Corporation Act” of Illinois on May 15, 1979. App. Ex. No. 9. The Center is a for-profit entity. The Center’s “Financial Statements” for July 31, 2007 and 2008 state under “Note 4 – Related Party Transactions,” that the Center “has entered into a building lease with a trust. Under the terms of the lease, during the years ended July 31, 2008 and 2007, the [Center] was obligated to make monthly lease payments of \$10,125 and in addition, is responsible for the real estate tax, utilities, repairs and maintenance of the facility.” “During the year ended July 31, 2008 and 2007, rent payments amounted to \$111,375 and \$121,500, respectively, and real estate taxes amounted to \$37,149 and \$39,189, respectively. Tr. pp. 15-16, 23-24, 28; App. Ex. No. 13. Ms. Fouks, as sole beneficiary of the trust, earned \$111,375 in rent from the Center in 2008 and \$121,500 in rent in 2007.

In Coles-Cumberland, Plaintiff rented the property at issue to Lincolnland Home Care Foundation for \$45,000 in rent plus payments including payment of real estate taxes. Coles-Cumberland at 354. The court found that “[T]he payment of the real estate taxes are part of the rent, and it clearly benefits Coles-Cumberland not to have to pay those expenses.” *Id.* at 354. Similarly, Ms. Fouks, as owner of the property, is benefiting from not having to pay the property taxes on the subject property. The evidence is

overwhelming that Ms. Fouks' primary use of the property at issue is for the production of income, or "with a view to profit," with this income coming from rent payments and not having to pay property taxes. The exemption of property used with a view to profit is proscribed by 35 ILCS 200/15-35, and the Court's ruling in Swank.

Counsel for the Achievement Center cited Milward v. Paschen, 16 Ill. 2d 302 (1959) in his opening and closing arguments. According to Counsel, "the issue in that case had nothing to do with who owned the property. Whether or not the school was exempt had to do with the use and how that use compared to what was being done in the public school system." "Ms. Fouks has told us today that she offers a program as good if not better than what is offered in the public school system..." Tr. p. 33.

Ms. Fouks may be offering a program "better" than the public school system. But the statute at issue here, 35 ILCS 200/15-35, and the Court's ruling in Swank, do not allow me the discretion to balance what is very clearly property used with a view to profit against the quality of the program offered on the property. The statute requires ownership of the property by a school. In Milward, the Court did not have to focus on ownership because the Foundation at issue owned the property. *Id.* at. 305. Furthermore, the school at issue in Milward was a not-for-profit school. *Id.* at 311.

In Swank, the taxpayers also asked the Court to consider use, rather than ownership, in exempting their property. The Court noted that in all cases where use of the property was the dispositive factor under section 15-35, the exemption applicant was not a for-profit corporation. The Court added that "[T]his is not the case here." "It is undisputed that the plaintiffs were in business to earn profit for themselves as the sole shareholders and directors of for-profit corporations." Swank at 863-864. The Court

declined to extend tax exemption under section 15-35 to properties held for profit, even if the properties were used for educational purposes. *Id.* at 863. With the facts in the instant case being so similar to Swank, this tribunal must similarly decline.

WHEREFORE, for the reasons stated above, it is recommended that the Department's determination which denied the exemption from 2009 real estate taxes should be affirmed, and Cook County Parcel 18-20-200-036-0000 should not be exempt from 2009 real estate taxes.

ENTER:

June 20, 2012

Kenneth J. Galvin  
Administrative Law Judge