

PT 14-05

Tax Type: Property Tax

Tax Issue: Charitable Ownership/Use

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

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

v.

**PRESENCE COVENANT MEDICAL CENTER
Applicant**

Docket No. 14-PT-005

Tax Year 2013

RECOMMENDATION FOR DISPOSITION

Appearances: Robin Gill, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Steven F. Pflaum, Tonya G. Newman, and Alex Hartzler of Neal, Gerber & Eisenberg, LLP for Presence Covenant Medical Center, and Frederic M. Grosser, Attorney at Law, for Cunningham Township

Synopsis:

On December 26, 2013, Presence Covenant Medical Center (“applicant”) filed with the Champaign County Board of Review (“Board”) 28 applications for non-homestead property tax exemptions for the year 2013 for 68 parcels of property located in Champaign County.¹ The applications were filed pursuant to section 16-70 of the Property Tax Code (“Code”) (35 ILCS 200/1-1 *et seq.*) and sought exemptions pursuant to section 15-86 of the Code. The Board recommended that the properties receive full year exemptions. On February 6, 2014, the Department of Revenue (“Department”) issued its decisions in which it agreed with the Board

¹ Some of the applications include multiple parcels; the Department docket numbers for the 28 applications are 13-10-58 through 13-10-85.

and granted the exemptions for nearly all of the property.² On April 4, 2014, Cunningham Township (“Township”) sent a letter to the Department requesting a formal hearing with respect to all 28 of the applications. The applicant filed a Motion to Dismiss the Township’s request for a hearing pursuant to the Department’s regulation (86 Ill.Admin.Code §200.185) and section 2-619 of the Code of Civil Procedure (735 ILCS 5/1-101 *et seq.*) on the basis that the Township’s request for a hearing was not timely. The Township filed a Response, and the applicant filed a Reply. For the following reasons, it is recommended that the Motion to Dismiss be granted.

FINDINGS OF FACT:

1. On December 20, 2013, the applicant sent letters to the following five taxing districts: (1) City of Champaign; (2) City of Urbana; (3) Parkland College; (4) Champaign Unit 4 School District; and (5) Urbana School District 116. Each letter advised the addressee that on or before December 31, 2013, the applicant would be filing with the Board an application for a property tax exemption for the properties listed on an attachment. The attachment to each letter had a list of 68 parcels of property that were located in either Champaign or Urbana.³
2. On December 26, 2013, the applicant filed with the Board 28 applications for property tax exemptions for the year 2013 that included the 68 parcels listed in the attachments.
3. The Township is located in Champaign County. Some of the parcels for which the applicant sought an exemption are located in the Township.⁴

² On the Exemption Certificates for 13-10-63 and 13-10-73, the Department decided that a portion of two parcels are taxable.

³ The facts are undisputed and are based on documents that were either submitted with the applications or filed by the parties; the documents were not marked as exhibits.

⁴ It is not clear from the documents whether all 68 parcels are located in the Township, but at least some of them are located there.

4. After the applications were filed and prior to the Board's recommendations, the Township did not intervene in writing in the proceedings before the Board.
5. On January 14, 2014, the Board issued its recommendations that the exemptions be granted.
6. After the Board's recommendations were issued and prior to the Department's decisions, the Township did not intervene in writing at the Department level.
7. On February 6, 2014, the Department issued 28 Forms PTAX-301-C, which granted the exemptions for nearly all of the parcels.
8. On April 4, 2014, the Township's Assessor sent a letter to the Department requesting a hearing on behalf of the Township with respect to the Department's decisions on all of the 28 applications.

CONCLUSIONS OF LAW:

The Department's regulation concerning Non-homestead Exemption Proceedings provides that certain entities may intervene in the proceedings. 86 Ill. Admin. Code §110.115(h)(3). The regulation states, in part, as follows: "Intervenors shall be either an entity with an interest in the property or a taxing district within whose territory the property lies in whole or in part." *Id.* Because the Township is a "taxing district within whose territory the property lies in whole or in part," it is an entity that has the right to intervene in the proceedings. *Id.* Although the Township has the right to intervene, the regulation places some restrictions on the right to intervene and states, in part, as follows:

Intervenors shall have intervened in writing in the consideration of the application at the Board of Review or Board of Appeals level prior to such Board's determination (recommendation) or at the Department level prior to the Department's decision. *Id.*

It is undisputed that the Township did not intervene in writing either at the Board level prior to the Board's determination or at the Department level prior to the Department's decision. Because the Township did not seek to intervene at either the Board or Department level, the applicant filed a Motion to Dismiss in which it contends that the Township's request for a hearing is untimely.

Notice

In response to the Motion, the Township argues that although the regulation states that intervention at the Department level is to be prior to the Department's decision, the Township claims that it did not receive notice of the proceedings until after the Department's decision. The Township states that the first time that it received notice of the proceedings was after February 6, 2014.⁵ The Township claims that it has statutory and due process rights to participate in these proceedings, and those rights should not be denied because it sought to participate after it became aware of the Department's decision. The Township filed its request for a hearing within 60 days of the Department's decision, and it believes that it should be allowed to participate in the proceedings without regard to the fact that it intervened after the Department's decision.

The applicant filed its applications for non-homestead property tax exemptions with the Board pursuant to Section 16-70 of the Property Tax Code, which provides as follows:

Determination of exemptions. The board of review shall hear and determine the application of any person who is assessed on property claimed to be exempt from taxation. However, the decision of the board shall not be final, except as to homestead exemptions. Upon filing of any application for a non-homestead exemption which would reduce the assessed valuation of any property by more than \$100,000, the owner shall deliver, in person or by mail, a copy of the application to any municipality, school district, community college district, and fire protection district in which the

⁵ The Township did not provide the date on which it claims that it first received notice. The Township's assessor, Dan Stebbins, signed an affidavit in which he stated that he first became aware of the applicant's application and the Department's decision when he checked his file folder that is kept at the office of the Champaign County Supervisor of Assessments. Mr. Stebbins explained that the Champaign County Supervisor of Assessments maintains a file folder in his office for each township assessor and puts items "of interest" in the folders. Mr. Stebbins simply explained that one day he looked at his folder and "found a copy" of the exemption certificate issued by the Department that was dated February 6, 2014, and that was "the first knowledge" that he had of the applicant's application or the Department's decision. (Affidavit of Cunningham Township Assessor, ¶4)

property is situated. Failure of a municipality, school district, community college district, or fire protection district to receive the notice shall not invalidate any exemption. The board shall give the municipalities, school districts, community college districts, fire protection districts, and the taxpayer an opportunity to be heard. The clerk of the board in all cases other than homestead exemptions, under the direction of the board, shall make out and forward to the Department, a full and complete statement of all the facts in the case. The Department shall determine whether the property is legally liable to taxation. It shall notify the board of review of its decision, and the board shall correct the assessment if necessary. The decision of the Department is subject to review under Sections 8-35 and 8-40. The extension of taxes on any assessment shall not be delayed by any proceedings under this Section, and, if the Department rules that the property is exempt, any taxes extended upon the unauthorized assessment shall be abated or, if paid, shall be refunded. 35 ILCS 200/16-70.

Under this section, there are two requirements relating to taxing districts; one requirement must be done by the applicant, and one must be done by the Board. Housing Authority of County of Marion v. Department of Revenue, 389 Ill. App. 3d 1005, 1007 (5th Dist. 2009). First, the applicant must deliver a copy of the application “to any municipality, school district, community college district, and fire protection district in which the property is situated.” 35 ILCS 200/16-70. Second, the Board must give the applicant and the aforementioned taxing districts “an opportunity to be heard.” *Id.*; see also Housing Authority, at 1007.

The Township believes that the applicant did not fulfill the first requirement and has given two arguments for its position: (1) the applicant did not deliver a copy of the applications to the taxing districts that it notified (*i.e.*, the applicant sent letters notifying them of its intent to file the applications but did not send copies of the applications); and (2) the applicant did not give notice of any kind to the Township (*i.e.*, neither a copy of the applications nor a letter indicating an intent to file the applications).

The Township’s first argument is without merit because the letters that the applicant sent were sufficient notice under the Department’s regulation. For applications where the exemption would reduce the property’s assessed valuation by more than \$100,000, the Department’s regulation states that the application must include, *inter alia*, the following: “copies of the letters the applicant sent notifying affected municipalities, school districts and community college

districts of the application.” 86 Ill. Admin. Code §110.115(a)(1)(A)(v). As the Department’s regulation recognizes, the purpose of the notice provision in section 16-70 is satisfied when letters are sent to the various taxing districts notifying them of the applications, and the letters that the applicant sent were sufficient notice that the applications were going to be filed. Sending a copy of 28 applications to each taxing district would not serve any additional purpose when a letter notifying them of the intent to file the applications is sufficient notice under the Department’s regulation.

Furthermore, in its Response, the Township implicitly acknowledges that the letters were sufficient notice when it stated the following with respect to its second argument: “The letters furnished by [the applicant] may be read to have complied literally with the wording of the statute and regulations in some sections as to recipients if the word ‘municipality’ is read to exclude everything but cities and villages.” (Township’s Response ¶11) The letters that the applicant sent, therefore, were sufficient notice to the taxing districts under section 16-70.

With respect to the Township’s second argument that notice was not sent to the Township, the applicant admits that it did not send a letter to the Township, but the applicant argues that a township is not a “municipality” under the statute and regulation. Because section 16-70 does not define “municipality,” the applicant contends that in this situation, courts follow the Statute on Statutes unless doing so “would be inconsistent with the manifest intent of the General Assembly or repugnant to the context of the statute.” Wauconda Fire Protection District v. Stonewall Orchards, LLP, 214 Ill. 2d 417, 431 (2005), *quoting* Statute on Statutes (5 ILCS 70/1). Section 1.27 of the Statute on Statutes states that “municipalities” has the meaning established in Section 1 of Article VII of the Illinois Constitution. 5 ILCS 70/1.27. That provision of the Illinois Constitution states as follows:

"Municipalities" means cities, villages and incorporated towns. "Units of local government" means counties, municipalities, townships, special districts, and units, designated as units of local government by law, which exercise limited governmental powers or powers in respect to limited governmental subjects, but does not include school districts. Ill. Const. 1970, art. VII, §1.

The applicant contends that under this provision, "townships" are units of local government and are also a type of a taxing district, but they are not "municipalities." The applicant maintains that because a township is not a municipality, the Township was not entitled to formal notice under section 16-70.

In addition, the applicant argues that the Township actually did receive notice because the Township and the City of Urbana share the same geographic borders and many of the same officials.⁶ The applicant contends that members of the Urbana City Council serve *ex officio* as members of the Township's Board, and they are the same individuals who authorized the Township's assessor to intervene in these proceedings.

The Township response to the applicant's arguments is that the applicant should have given the Township notice because the Township believes that section 110.115(h)(3) of the Department's regulation provides all taxing districts (whose territory contains some of the property) the right to notice and participation. The Township indicates that with respect to the notice provisions in the statute and regulation, there is a difference between the taxing districts listed in the statute and the taxing districts listed in the Department's regulation; the regulation omits "fire protection district" from its list. *Compare* 86 Ill. Admin. Code §110.115(a)(1)(A)(v) *with* 35 ILCS 200/16-70. In the Township's view, it would be irrational to conclude that the word "municipality" in the statute includes only certain taxing districts and that only certain taxing districts have the right to notice. The Township contends that fire protection districts get notice

⁶ Although the applicant provided citations to the internet for this contention, the applicant did not provide any documents to support this argument. (Applicant's Reply p. 5)

under the statute but not under the regulation. The Township maintains that the applicant is required to give notice to all “geographically relevant districts.” See Housing Authority, at 1007.

The Township’s arguments are again without merit because although section 110.115(h)(3) of the Department’s regulation gives all taxing districts the right to intervene and participate in the proceedings if done in a timely manner (86 Ill. Admin. Code §110.115(h)(3)), neither the regulation nor section 16-70 requires the applicant to give notice to all the taxing districts. Section 16-70 requires the applicant to give notice “to any municipality, school district, community college district, and fire protection district in which the property is situated.” 35 ILCS 200/16-70. As the applicant has indicated, the Statute on Statutes adopts the definition of “municipalities” that is in the Illinois Constitution, and under that definition, “municipalities” includes “cities, villages, and incorporated towns.” Ill. Const. 1970, art. VII, §1; 5 ILCS 70/1.27. In other words, under the statute, the applicant must give notice “to any [city, village, incorporated town], school district, community college district, and fire protection district in which the property is situated.” 35 ILCS 200/16-70. Townships are units of local government, but they are not municipalities. Ill. Const. 1970, art. VII, §1; 5 ILCS 70/1.27; see also Diversified Computer Services, Inc. v. Town of York, 104 Ill. App. 3d 852, 856 (2nd Dist. 1982) (“townships are not included as municipalities subject to the proscriptions of the Illinois Municipal Code”); In the Matter of Town of Lisbon Election, 104 Ill. App. 3d 115, 117 (2nd Dist. 1982) (“a ‘town’ is a separate political unit and has a definite historical meaning other than municipality or incorporated town”); Committee of Local Improvements of the Town of Algonquin v. Objectors to Assessment, 39 Ill. 2d 255 258-259 (1968) (township separate and distinct from municipality and incorporated town).

Although the list of taxing districts in the Department's regulation does not include fire protection districts, a reading of the full provision that includes the list indicates that the applicant must still provide notice to fire protection districts where the property is located. The list of taxing districts is in subsection (a) of the regulation, which is titled "Contents of exemption application," and that subsection provides, in relevant part, as follows:

a) Contents of exemption application

An application form for a non-homestead property tax exemption shall be obtained from the Board of Review or Board of Appeals in the county in which the property is located. The applicant shall use the appropriate application form (Form No. PTAX-300-R (religious), PTAX-300-FS (federal or state agency) or PTAX-300 (all other property)), shall answer all questions on the form completely and shall sign the form.

1) The applicant shall attach all required documentation to the application form, including, **at a minimum**, copies of the following:

A) For all exemption application forms:

i) Proof of ownership;

ii) lease(s) or contract(s) concerning the property;

iii) legal description of the property;

iv) parcel index number; and

v) if the exemption would reduce the property's assessed valuation by more than \$100,000, **copies of the letters the applicant sent notifying affected municipalities, school districts and community college districts of the application.** Emphasis added; 86 Ill. Admin. Code §110.115(a)(1)(A).

The regulation indicates that, *at a minimum*, the applicant must include copies of the letters sent to the affected municipalities, school districts and community college districts. The regulation does not indicate that notice to an affected fire protection district is not required.

The conclusion that under section 16-70 the applicant is not required to send notice to townships is consistent with the manifest intent of the General Assembly and the context of the

statute. The analysis in Housing Authority, *supra*, is helpful for understanding this even though the issue in that case was different. In Housing Authority, the taxing districts did not intervene in writing before either the Board recommended granting the non-homestead property tax exemption or the Department issued its decision denying the exemption. The applicant filed a timely administrative protest after the Department issued its decision, and the director accepted the recommendation of the administrative law judge to deny the exemption. The applicant then filed a complaint for administrative review in circuit court, and the circuit court reversed the Department's decision.

Subsequently, four taxing districts (which included a township) filed a petition in circuit court contending that the court's order was void because the four taxing districts were not included as parties in the complaint for administrative review. After the applicant filed a Motion to Dismiss the petition, the circuit court certified a question for the appellate court to review, and the question was essentially whether municipalities, school districts, and community college districts who are entitled to receive notice pursuant to section 16-70 but who, after receiving notice, do not participate in the proceedings before the Board are "necessary parties" in any subsequent administrative review proceeding.⁷ The appellate court answered the question in the negative, finding that the taxing districts were required to intervene in writing before the Department issued its decision. Because the taxing districts did not intervene, they were not parties of record to the proceedings and were not "necessary parties" in the subsequent administrative review proceeding.

One of the arguments made by the taxing districts was that they should have received notice of the administrative review proceeding, and they cited the case of Board of Education of

⁷ Although one of the taxing districts was a township, the certified question did not include "townships" as one of the entities entitled to receive notice, and the issue of whether townships are entitled to notice was not addressed by the court.

Bethany Community Unit School District No. 301 v. Regional Board of School Trustees, 255 Ill. App. 3d 763 (1994), where the court found that a Motion to Dismiss should be denied when a party failed to satisfy statutory notice requirements. The court in Housing Authority found the Bethany case distinguishable and noted the “supreme irony” of the taxing districts’ position by stating as follows:

Inadequate notice ... would not have defeated the application under the Property Tax Code. The Property Tax Code explicitly provides that the failure of any district to receive notice “shall not invalidate any exemption.” 35 ILCS 200/16-70 (West 2006). The explicit waiver of any penalty for improper notice in the Property Tax Code is yet another indication that petitioners never became parties of record. Housing Authority, at 1013.

Because section 16-70 explicitly states that the failure of a taxing district to receive notice shall not invalidate any exemption, the conclusion that notice need not be sent to townships is consistent with the language of the statute. Furthermore, this conclusion appears to be consistent with the legislative intent because, as the applicant indicated in one of its arguments, it is possible that there is some “overlap” among the municipalities and townships with respect to the officials who represent them, and the legislature determined that notice to municipalities is sufficient.

In summary, the statute and the Department’s regulation give all taxing districts (whose territory contains some of the property) the right to intervene and participate in the proceedings. 35 ILCS 200/16-70; 86 Ill. Admin. Code §110.115(h)(3). They do not, however, give all the taxing districts the right to notice, and the statute explicitly states that failure to receive notice does not invalidate the exemption. 35 ILCS 200/16-70.

Party to the Proceeding

Finally, because the applicant was not required to send notice to the Township, the only issue remaining is whether the Township is a “party to the proceeding” who may file an

administrative protest. Section 8-35 of the Code sets forth the procedure for filing an administrative protest and states, in relevant part, as follows:

[A]ny party to the proceeding who feels aggrieved by the decision may file an application for hearing. 35 ILCS 200/8-35(b).

In Housing Authority, *supra*, the court found that because the taxing districts did not intervene in writing at the Board level or at the Department level prior to their decisions, they were not “parties to the proceeding” under section 8-35(b). Housing Authority, at 1009-1013.

For the same reason, because the Township failed to intervene in writing at the Board level or at the Department level prior to their decisions, the Township is not a party to the proceeding and cannot file an administrative protest under section 8-35(b). Even though the protest was “timely” in that it was filed within 60 days of the Department’s decision, the protest must be dismissed because the Township is not a party to the proceeding and did not have a right to file it.

Recommendation:

For the foregoing reasons, it is recommended that the applicant’s Motion to Dismiss be granted.

Linda Olivero
Administrative Law Judge

Enter: October 28, 2014