

PT 00-37

Tax Type: Property Tax

Issue: Charitable Ownership/Use

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

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|----------------------------------|---|-----------------------|----------------------|
| LAWRENCE COUNTY MEMORIAL |) | | |
| HOSPITAL |) | | |
| |) | A.H. Docket # | 99-PT-0013 |
| |) | | |
| Applicant |) | Docket # | 98-51-3 |
| v. |) | | |
| |) | Parcel Index # | 06-000-481-00 |
| THE DEPARTMENT OF REVENUE |) | | |
| OF THE STATE OF ILLINOIS |) | | |

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. Michael F. Crowe, State's Attorney of Lawrence County, appeared on behalf of Lawrence County Memorial Hospital.

Synopsis:

The hearing in this matter was held at the Department of Transportation Building, 1100 Eastport Plaza Drive, Collinsville, Illinois on November 1, 1999, to determine whether or not Lawrence County Parcel Index No. 06-000-481-00 qualified for exemption from real estate taxation for the 1998-assessment year.

Mr. Gerald E. Waldroup, Administrator of Lawrence County Memorial Hospital (hereinafter referred to as the "Hospital") and Mr. Michael Healy, chief financial officer of the Hospital were present and testified on behalf of the Hospital.

The issues in this matter include: first, whether the Hospital is a county hospital; secondly, whether the building on the parcel here in issue is a public building; and finally, whether the parcel here in issue and the building thereon were used for public purposes during the portion of the 1998-assessment year that it was owned by the Hospital. Following the submission of all of the evidence and a review of the record, it is determined that the Hospital is a county hospital. It is also determined that the building on this parcel is not a public building. Finally it is determined that the building on this parcel was not used for public purposes during the portion of the 1998-assessment year that it was owned by the Hospital.

It is therefore determined that this parcel does not qualify for exemption during the portion of the 1998-assessment year that it was owned by the Hospital.

Findings of Fact:

1. The jurisdiction and position of the Illinois Department of Revenue (hereinafter referred to as the “Department”) in this matter, namely that this parcel and the building thereon was not in exempt use during the portion of the 1998-assessment year that it was owned by the Hospital, was established by the admission in evidence of Department’s Exhibit Nos. 1 through 6A.

2. On May 5, 1945, the Lawrence County Board of Supervisors adopted a resolution calling for a special election to authorize the issuing of bonds for the purpose of erecting a nonsectarian public hospital. The sale of the bonds was authorized by a resolution of the Board on August 4, 1945. The Hospital was completed and began operating as a county hospital during 1950. (Appl. Ex. Nos. 1 & 6)

3. The Hospital is currently operated pursuant to by-laws, last reviewed August 12, 1998. (Appl. Ex. No. 9)

4. The parcel here in issue and the building thereon was conveyed by Shirley K. Kavanaugh by a warranty deed dated May 18, 1998, to the Hospital. (Dept. Ex. No. 2A)

5. The building on this parcel, prior to the time that the Hospital acquired it, had been rented to the Illinois Department of Public Aid and had been used for offices. The seller renovated the building to the Hospital's specifications and then sold it to the Hospital. (Tr. p. 14)

6. The building on the parcel here in issue after it was remodeled and acquired by the Hospital was used as physicians' offices for two physicians who provide care to the community. This building, commonly known as the clinic, is about one mile from the Hospital. (Tr. pp. 12 & 14)

7. The board of directors of the Hospital has determined that physicians are reluctant to move into small communities on their own initiative. Consequently, the Hospital acquired the clinic and proceeded to recruit physicians to practice in the community and to staff the Hospital. (Tr. pp. 14 & 15)

8. Since the Hospital acquired the clinic, it has been occupied by two physicians, Dr. Steven Ramsaran and Dr. Vinod Doreswamy. (Tr. p. 15)

9. Dr. Ramsaran is a family practice physician. He began to occupy one-half of the building on this parcel about June 1, 1998. Dr. Ramsaran entered into a contract with the Hospital whereby the Hospital paid him an income guarantee. (Tr. p. 15)

10. Dr. Ramsaran's contract with the Hospital is a net-guaranty contract. During the first year of that contract if his practice did not generate \$110,000.00 then the Hospital was obligated to make up the difference. The Hospital did this on a monthly basis. During any month of that first year, if the records of Dr. Ramsaran's practice did not show that he had generated a net income of \$10,416.67 per month, the Hospital would write a check to Dr. Ramsaran for the difference between his actual net income and \$10,416.67. If Dr. Ramsaran's income for the month exceeded \$10,416.67 then he was required to write a check to the Hospital for the amount of the excess. (Tr. pp. 25-27)

11. Dr. Doreswamy is a pediatrician. He began to occupy one-half of the building on this parcel about the first of December of 1998. He is the only pediatrician practicing in Lawrence County and he is an employee of the Hospital. (Tr. p.16)

12. During his first year of practice, Dr. Doreswamy's salary was \$110,000.00. He received a payroll check from the Hospital every two weeks. During the first year, any income from his practice went to the Hospital. During the second year of his practice Dr. Doreswamy's salary was \$90,000.00. This amount was handled the same way that his salary was handled during the first year. During the second year Dr. Doreswamy was allowed to collect and keep any income he earned over and above \$90,000.00. Dr. Doreswamy also received county pension and health benefits from the Hospital. (Tr. pp. 27 & 28)

13. Approximately twelve physicians are on the staff of the Hospital. There are no physician's offices in the Hospital. (Tr. pp. 23, 30 & 31)

14. The billing and collection policies utilized by Dr. Ramsaran and Dr. Doreswamy are set by them in consultation with the Hospital. Basically the fees charged by these physicians are the usual and customary fees generally charged by physicians in the area. The patient hours at the clinic building are generally 8:00 a. m. to 5:00 p. m. While the physicians consulted with the Hospital concerning the hours that they see patients, the physicians made the final decision. (Tr. pp. 17 & 18)

15. Both of the physicians have keys to the clinic building. Since the Hospital performs maintenance at the clinic building the Hospital also has keys. (Tr. p. 17)

16. Dr. Ramsaran works three or four days per month in the emergency room at the Hospital. (Tr. p. 20)

17. Both Dr. Ramsaran and Dr. Doreswamy are on the medical staff at the Hospital. Both physicians refer their patients primarily to the Hospital, if they require hospital care. (Tr. pp. 21 & 22)

18. Neither Dr. Ramsaran nor Dr. Doreswamy was required to pay rent to the Hospital for their office space in the clinic building. (Appl. Ex. No. 11)

19. While the Hospital assisted the physicians in recruiting employees, each of the physicians hired their own employees. If it were necessary for one of these physicians to fire an employee that physician would do it. The two physicians either do their own payrolls or hire an

outside service to do it. (Tr. p. 30)

Conclusions of Law:

Article IX, §6 of the Illinois Constitution of 1970, provides in part as follows:

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

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

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956); Milward v. Paschen, 16 Ill.2d 302 (1959); and Cook County Collector v. National College of Education, 41 Ill.App.3d 633 (1st Dist. 1976). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944) and People ex rel. Lloyd v. University of Illinois, 357 Ill. 369 (1934). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967); Girl Scouts of DuPage County Council, Inc. v. Department of Revenue, 189 Ill.App.3d 858 (2nd Dist. 1989); and Board of Certified Safety Professionals v. Johnson, 112 Ill.2d 542 (1986). It is therefore very clear that the burden of proof is on the Hospital in this case to establish that it is entitled to an exemption.

The state's attorney of Lawrence County on behalf of the Hospital contends that the parcel here in issue and the clinic thereon qualifies for exemption from real estate taxation pursuant to 35 ILCS 200/15-60(b) which exempts certain taxing district property as follows:

Also exempt are:

(b) all public buildings belonging to any county, township, or municipality, with the ground on which the buildings are erected;

The Property Tax Code does not define the term “public buildings”. I have only been able to find two cases which have relied on what is now 35 **ILCS** 200/15-60(b). The first of those cases is Adams County v. City of Quincy, 130 Ill. 566 (1889) where Adams County alleged that the foregoing provision applied to the Adams County Courthouse. The Illinois Supreme Court agreed that the Courthouse was a public building but decided the case on another issue. The second case which relied on the foregoing language is City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992). The City of Chicago case involved the “Kraft buildings” which housed the cable commission, the department of human services, department of health, department of personnel, Chicago police department, Chicago fire department, and various other departments of the City of Chicago. The Illinois Supreme Court agreed that the Kraft buildings, which were owned by the City of Chicago, were public buildings. The Public Building Egress Act, 425 **ILCS** 55/1 defines the term “public buildings” to include buildings which shall be used for churches, school houses, operas, theatres, lecture rooms, hotels, public meetings and town halls. In view of the Adams County v. City of Quincy case, the City of Chicago v. Illinois Department of Revenue case, as well as the definition of “public building” in the Public Building Egress Act, it is clear that the clinic building here in issue was not a “public building” during 1998. The clinic building housed the offices of two private physicians who controlled the ingress and egress to the building and used that building in their private practice of medicine. I therefore conclude that the clinic building located on this parcel was not a “public building”.

The statutory provision which is applicable to and concerns municipal corporations is 35 **ILCS** 200/15-75 which provides as follows:

All market houses, public squares and other public grounds owned by a municipal corporation and used exclusively for public purposes are exempt.

The term “Municipal Corporation” in the statute includes counties. *See In re Application of County Collector*, 48 Ill.App.3d 572 (1st Dist. 1977) and *Skil Corp. V. Korzen*, 32 Ill.2d 249 (1965). The foregoing statutory exemption requires two things. First, the property must be owned by the county. Secondly, it must be exclusively used for public purposes. In this case the Hospital purchased the clinic to be used for physicians offices. It then went out to recruit two physicians to occupy the clinic. The Hospital offered them either a substantial salary or a guaranteed income. It assisted them in hiring help. It provided them with office space in the clinic building at no charge. While there was an incidental benefit to the members of the public who were able to become patients of and receive medical care from one or the other of these physicians, the primary beneficiaries of these recruiting perks, including rent free use of the clinic building, were the two physicians themselves. I find the factual scenario at issue in this case to be similar to the case of *Mason District Hospital v. Tuttle*, 61 Ill.App.3d 1034 (4th Dist. 1978), in which the Court determined that a physician’s office building owned by a district hospital and used to recruit physicians to Havana, Illinois, was not used primarily for charitable purposes. The Court in that case concluded as follows:

Although it is clear that the Havana Medical Center has succeeded- at least in part- in attracting physicians to the Havana community and its location has facilitated easy access therefrom to Mason District Hospital (thus benefiting, patient, doctor and hospital alike), it appears to us that the *primary use* of the facility is as offices for the physicians privately practicing there. As such, the center’s purpose (although arguably a charitable one incidentally) is primarily noncharitable.

In this case while the statutory test is different, the result is the same. The primary use of the parcel here in issue is as offices for the two physicians who were recruited and practiced there and not primarily for public purposes.

In addition it should be pointed out that 55 **ILCS** 5/5-1005 in enumerating the powers granted to counties by the General Assembly concerning non-sectarian county hospitals provides as follows:

6. To cause to be erected, or otherwise provided, suitable buildings for, and maintain a county hospital and necessary branch hospitals and/or a county sheltered care home or county nursing home for the care of such sick,

The foregoing enumeration of powers defines what qualifies as a public purpose for county hospital purposes. This provision does not include physician's office buildings. Therefore, I conclude that the use of the parcel here in issue and the clinic thereon is not a public purpose.

I therefore recommend that Lawrence County Parcel Index No. 06-000-481-00 and the building thereon be taxable to Lawrence County Memorial Hospital for the portion of the 1998-assessment year when it was owned by Lawrence County Memorial Hospital, namely from May 18, 1998, through December 31, 1998.

Respectfully Submitted,

George H. Nafziger
Administrative Law Judge
June 23, 2000