

PT 95-63  
Tax Type: PROPERTY TAX  
Issue: Government Ownership/Use

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

-----  
METROPOLITAN PIER AND )  
EXPOSITION AUTHORITY ) Docket # 93-16-1016  
 ) Parcel Index # 17-27-106-013 and  
 ) 17-27-106-015  
Applicant )  
 )  
v. )  
 )  
THE DEPARTMENT OF REVENUE ) George H. Nafziger  
OF THE STATE OF ILLINOIS ) Administrative Law Judge  
-----

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Attorney D. Rainell Rains appeared on behalf of the Metropolitan Pier and Exposition Authority (hereinafter referred to as the "applicant"). Attorney Michael T. Reynolds appeared on behalf of Lakeside Bank (hereinafter referred to as "Lakeside"), an intervenor herein. Attorney Larry C. Jurgens appeared on behalf of R. R. Donnelley and Sons Company (hereinafter referred to as "Donnelley"), also an intervenor herein.

SYNOPSIS: The hearing in this matter was held at 100 West Randolph Street, Chicago, Illinois, on June 7, 1995, to determine whether or not the parcels here in issue qualified for exemption from real estate tax for the 1993 assessment year.

The issues in this matter include first, whether the applicant was the owner of the parcels here in issue during the 1993 assessment year. The second issue is whether the parcels here in issue were used by the applicant for primarily public purposes during the 1993 assessment year. Following the submission of all of the evidence and a review of the record, it is determined that the applicant owned the parcels here in issue during

the entire 1993 assessment year. It is further determined that the parcels here in issue were used by the applicant for primarily public purposes during the 1993 assessment year.

FINDINGS OF FACT:

1. On January 26, 1994, the Cook County Board of Appeals transmitted an Application for Property Tax Exemption To Board of Appeals, concerning the parcels here in issue for the 1993 assessment year, to the Illinois Department of Revenue (hereinafter referred to as the "Department") (Dept. Ex. No. 2).

2. On November 17, 1994, the Department notified the applicant that it was denying the exemption of the parcels here in issue for the 1993 assessment year, on the ground that these parcels were not in exempt use during the 1993 assessment year (Dept. Ex. No. 3).

3. By a letter dated December 15, 1994, the attorney for the applicant requested a formal hearing in this matter (Dept. Ex. No. 4).

4. The hearing held in this matter on June 7, 1995, was held pursuant to that request.

5. At the hearing on June 7, 1995, the attorneys for Donnelley and Lakeside filed a Petition to Intervene in this matter (Intervenor Ex. No. 1).

6. There being no objection to that Petition to Intervene, said petition was allowed, and Donnelley and Lakeside were then allowed to participate fully in this proceeding (Tr. pp. 10 & 11).

7. Prior to December 17, 1992, Donnelley owned the parcels here in issue, which were improved with a two-level parking garage. Lakeside owned a two-story bank building located on the roof, that is the third level of this parking structure. Lakeside leased the airrights to the roof level of this parking structure from Donnelley, pursuant to a 40-year lease which expires during the year 2006 (Tr. pp. 34-36)

8. The applicant is a municipal corporation and body politic created by the Metropolitan Pier and Exposition Authority Act (hereinafter referred to as the "MPEA Act") (70 ILCS 210/1 et seq.).

9. The parcels here in issue, during 1992, were located in close proximity to McCormick Place.

10. By an amendment to the MPEA Act, effective in 1992, the General Assembly granted authority to the applicant to acquire property within a designated area by exercising the right of eminent domain, for the purpose of constructing an addition to McCormick Place.

11. On July 21, 1992, the applicant passed an ordinance designating the area to be acquired for this addition, and declaring the nature of the public use of that area. Section 5 of that ordinance provides as follows:

"It is hereby found and determined that the property comprising the Expansion Project Area is necessary and useful for the construction and maintenance of the Expansion Project, including its related facilities and ancillary parking, and that the acquisition of such real property is needed on an accelerated basis."

12. That same ordinance established the schedule for acquisition of these parcels by reference to the agreement between the applicant and Mc3D, Inc. for the design, development, and construction of this addition (Applicant Ex. No. 3, p. 2).

13. The parcels here in issue, pursuant to the foregoing agreement between applicant and Mc3D, Inc., were required to be available for construction on, or before, January 1, 1995 (Applicant Ex. No. 1, p. 26.).

14. On December 17, 1992, the applicant filed a complaint in condemnation, concerning the parcels here in issue, and other adjoining parcels owned by Donnelley (Dept. Ex. No. 2C).

15. To avoid protracted litigation, the applicant and Donnelley reached a settlement, concerning the parcels here in issue and the other Donnelley parcels. The applicant and Donnelley entered into a written stipulation

and settlement agreement, which was incorporated into the final judgment order (Tr. pp. 14 & 15).

16. Pursuant to a hearing, an Order Fixing Preliminary Just Compensation was entered in this condemnation action on January 25, 1993 (Dept. Ex. No. 2D).

17. On January 29, 1993, the applicant deposited the amount of the Preliminary Just Compensation with the Cook County Treasurer (Dept. Ex. No. 2E).

18. On March 30, 1993, the Final Stipulation was executed, and the Final Judgment Order was entered in the eminent domain proceeding (Dept. Ex. No. 2F).

19. The relevant portion of the Final Stipulation relating to the continued occupancy of Lakeside and Donnelley of the parcels here in issue, was set forth in the Final Judgment Order as follows:

"Plaintiff will acquire the bank facility, now leased to Lakeside Bank, and the parking structure on parcel 106-2 by deposit of its condemnation award on or before January 31, 1993 for the compensation agreed upon by Plaintiff and Donnelley. After transfer of title and until January 1, 1995, Donnelley will have the right to occupy the parking structure and Parcel 106-1 (Lot 13) at no cost, and Lakeside Bank will have the right to occupy the leasehold premises in the bank facility at a rental to Plaintiff in the amount of its current rent. Plaintiff will tender leases to Donnelley and Lakeside Bank consistent with this paragraph by May 1, 1993. Plaintiff will maintain reasonable access for Donnelley to the parking structure and Parcel 106-1 (Lot 13) and for Lakeside Bank that to the bank facility during their respective periods of occupancy as described above. Donnelley and Lakeside Bank will indemnify Plaintiff from any costs, expense or liability related in any way to their continued occupancy of said property. Lakeside Bank shall have the right to vacate the bank premises and cease paying rent at any time. Plaintiff agrees that payment of the condemnation award shall have no effect on the relocation payment due to Lakeside Bank under the Metropolitan Pier and Exposition Authority Act or any possible additional relocation assistance or payment that the City of Chicago may make to assist Lakeside Bank in remaining in the area." (Dept. Ex. No. 2F, p. 2)

20. In fact, no leases were ever tendered by the applicant to Donnelley or Lakeside, and no written leases were ever executed between the parties (Tr. p. 17).

21. Lakeside began making monthly payments to the applicant of \$5,000.00 for the continued occupancy of the bank building. The basis for this payment was Lakeside's former airright lease with Donnelley (Tr. p. 18.).

22. The applicant, pursuant to 70 ILCS 210/5(f), had an obligation to provide relocation assistance to all businesses, including Lakeside, located within the McCormick Place expansion project area. The time allowed for Lakeside to be relocated, from March 1993, to January 1995, was in recognition of the regulatory requirements to relocate a bank facility, the identification of a suitable replacement site within the McCormick Place area, as well as the time necessary to acquire substitute property, and to construct a replacement facility. The affidavit of John R. Montgomery III, the president of Lakeside (Intervenor Ex. No. 2), at paragraphs 22 through 50, describes in detail the chronology of events concerning the activities of the applicant and Lakeside, from May of 1993, through May 22, 1995, when Lakeside's relocated facility finally opened for business.

23. With the consent of Mc3D, Inc., Lakeside was allowed to occupy the bank building on the parcels here in issue, until May 21, 1995 (Applicant Ex. No. 1, para. 12).

CONCLUSIONS OF LAW: Article IX, Section 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."

35 ILCS 205/19.9 exempts certain property from taxation in part as follows:

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

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). 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). 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).

It has long been established that the question of whether property qualifies for exemption from taxation depends upon the constitutional and statutory provisions in force at the time for which the exemption is claimed. *The People v. Salvation Army*, 305 Ill. 545 (1922). The application for exemption here in issue concerns the 1993 assessment year.

In the case of *Board of Junior College District 504 v. Carey*, 43 Ill.2d 82 (1969), the Illinois Supreme Court determined that, for the purposes of exemption from taxation in cases involving eminent domain proceedings, the property is exempt from taxation from the date that the exempt entity files the petition for eminent domain, which, in this case, was December 17, 1992.

In the case of *City of Mattoon v. Graham*, 386 Ill. 180 (1944), the Supreme Court enunciated the doctrine that it is the primary use to which property is devoted, and not its secondary use which is controlling in determining whether or not the property qualifies for exemption. In *Metropolitan Sanitary District v. Rosewell*, 133 Ill.App.3d 153 (1st Dist. 1985), the Appellate Court held that if the primary use of a property by a municipal corporation is for a public purpose, an incidental use for a private purpose does not deprive the property of its tax-exempt character.

The Court further held that where a property owned by a municipal corporation is leased to a private concern, the entire property may be exempt so long as the lease to the private concern does not interfere with the owner's use of the property for its corporate purposes. In this case, I conclude that the primary use of the parcels here in issue during the 1993 assessment year was the applicant's use in connection with its statutory obligation, pursuant to Section 5 of the MPEA Act (70 ILCS 210/5) to relocate the Lakeside facility within the area of McCormick Place. The facts that Donnelley was allowed to continue to occupy, at no cost, the parking garage now owned by the applicant, and Lakeside was allowed to continue to occupy the bank facility on top of said parking garage and pay rent therefore to the applicant, were merely incidental to that primary purpose.

I therefore conclude that the applicant owned the parcels here in issue for real estate tax purposes during the entire 1993 assessment year. I further conclude that the applicant used the parcels here in issue during the 1993 assessment year, for the primary exempt purpose of fulfilling its statutory obligation of relocating the former owners of various interests in said parcels within the McCormick Place area.

I therefore recommend that Cook County parcels numbered 17-27-106-013 and 17-27-106-015 be exempt from real estate tax for the 1993 assessment year.

It should be pointed out that it would appear to be appropriate to place a leasehold assessment against the bank facilities occupied by Lakeside, and concerning which Lakeside paid rent to the applicant, during the 1993 assessment year.

Respectfully Submitted,

George H. Nafziger  
Administrative Law Judge

October , 1995