

PT 10-02
Tax Type: Property Tax
Issue: Government Ownership/Use

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

WHITESIDE COUNTY,

APPLICANT

v.

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

08-PT-0025

Real Estate Tax Exemption

**For 2007 Tax Year
P.I.N. 17-10-126-001**

Whiteside County Parcel

**Kenneth J. Galvin
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Mr. Timothy Zollinger, Ward, Murray, Pace & Johnson, PC, on behalf of Whiteside County Airport Board acting on behalf of Whiteside County; 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 property, identified by Whiteside County Parcel Index Number 17-10-126-001 (hereinafter the “subject property”), qualifies for exemption from 2007 real estate taxes under either 35 ILCS 200/15-60, which exempts “Taxing District Property,” or 35 ILCS 200/15-75, which exempts

“public grounds owned by a municipal corporation and used exclusively for public purposes.”

The controversy arises as follows: On March 12, 2008, “Whiteside County Airport Board acting on behalf of Whiteside County,” (hereinafter “Whiteside Airport Board” or “Applicant”) filed a Real Estate Exemption Complaint for the subject property with the Board of Review of Whiteside County (hereinafter the “Board”). The Board reviewed the Applicant’s complaint and subsequently recommended to the Illinois Department of Revenue (hereinafter the “Department”) that the exemption be granted.

On May 22, 2008, the Department issued an exemption certificate to the Applicant for P.I.N. 17-10-126-001 which provided as follows: The above parcel, the hangars 5B, 5E, the land on which they stand and the remainder of the parcel not covered by the buildings is exempt for 100% of the 2007 assessment year. All hangars except 5B, 5E and the land on which they stand are taxable. On June 27, 2008, the Applicant filed a timely protest of the denial of the exemption for all hangars and the land on which they stand, except 5B and 5E. In lieu of an evidentiary hearing, the Whiteside Airport Board and the Department submitted a Stipulation of Facts, and a “Supplemental Stipulation,” and filed briefs regarding the issue.¹ After considering the record and the parties’ arguments, I recommend that the Department’s exemption certificate be affirmed.

STIPULATED FACTS²:

¹ On February 10, 2009 the Assistant State’s Attorney for Whiteside County submitted a letter to the Department stating that Whiteside County “is in agreement with the Whiteside County Airport in regard to the claimed exemption.” Whiteside County did not submit briefs in the instant matter.

² The “Stipulated Facts” are derived solely from, and are a verbatim recitation of, the “Stipulation” provided by the parties in this matter.

1. The Whiteside County Airport (“Airport” or “County Airport”) in Whiteside County is municipally owned and operated. It is organized and existing under 620 ILCS 40/1, *et seq.* The land, all buildings and all maintenance equipment are owned by Whiteside County, Illinois. (Stipulation, para. 1).

2. The County Board of Whiteside County, by and through its State’s Attorney, consented to the property tax exemption requested. (Stipulation, para. 2).

3. As a municipally and county owned Airport, the Airport is operated for a public purpose. (Stipulation, para. 3).

4. The primary source of revenue for operation of the Airport is tax monies appropriated by the County Board of Whiteside County. The Airport is managed by a five person board appointed by the County Board for three year terms. The Airport Board does not have independent tax levy powers and the County Board approves its budget and provides its funding. The County Administrator would testify that in allocating funding and in approving budgets, the Airport is treated the same as other County operated departments, *e.g.*, Highway Department and Health Department. (Stipulation, para. 4).

5. The County Airport in Whiteside County is the only public airport in Whiteside County which is capable of providing all weather aviation use and has Airport owned tenant hangars. (Stipulation, para. 5).

6. The instrument approaches, the hard surface all-weather runways and the two long runways make the Airport desirable for basing aircraft, both commercial and private. The Airport no longer has scheduled airline service but flying instruction, engine

and radio maintenance and charter services are provided at Whiteside County Airport as part of its public service obligation. (Stipulation, para. 6).

7. It is integral to the operation of an airport, and particularly Whiteside County Airport, that aircraft tenant hangars are provided for the storage of personally owned aircraft. (Stipulation, para. 7).

8. Tenant aircraft hangars are considered vital to the operation of the Airport, to provide storage of aircraft out of Illinois' inclement weather and to provide security for expensive planes. The Airport Manager would testify that without tenant hangars, aircraft owners will not base aircraft at the Airport. Further, that without locally based aircraft, the Airport would not be used enough to justify its costs of operation or justify the employment of an airport manager to maintain it and provide fixed based operator services. (Stipulation, para. 8).

9. The tenant hangars at the Whiteside County airport were not considered for the purpose of generating a profit but rather to accommodate aircraft owners and generate use of the Airport for Whiteside County citizens. Rents from tenant hangar bays do not cover construction costs and maintenance costs of the hangars. (Stipulation, para. 9).

10. Hangars at the Whiteside County airport were substantially constructed with funds provided by grants from the United States government and the State of Illinois, as the rents generated do not normally service the debt load required to construct tenant hangars. (Stipulation, para. 10).

11. Tenant hangars at the County owned Airport serve the exact same function as hangars located at airports operated by Illinois Airport Authorities. Airports

performing public airport functions must provide tenant hangars to house local aircraft or such airports would not be used. (Stipulation, para. 11).

12. The real estate parcel at issue is Whiteside County property index #17-10-126-001. This parcel has three tenant hangar buildings, identified as Hangars 4, 5, and 6. (Stipulation, para. 12).

13. Hangar #6 is the newest building, having been built in 2005. It was built at a cost exceeding \$370,000.00 with funds given by the State of Illinois Department of Aeronautics from grant funds provided by the Federal Aviation Administration. (Stipulation, para. 13).

14. Each tenant hangar consists of 10 bays; the bays are designated by letters A through J, following the designated hangar number. (Stipulation, para. 14).

15. Hangar bays 5B, 5E and 5J are used by the Airport, for storage of its own grounds and runway maintenance equipment. (Stipulation, para. 15).

16. Hangar bay 5C is leased by the Illinois State Police, for storage of its aircraft for its use in law enforcement. The State Police also occupies a small office at the end of Hangar #4. (Stipulation, para. 16).

17. In 2008, the following tenant hangars were vacant and, although available for tenants, were not tenanted at all: 4F, 4G, 5D, 5G, 5H, 5I, 6H, and 6J; the Airport Board does not lease tenant hangars for any other uses other than for the storage of airplanes. (Stipulation, para. 17).

18. Lease rates charged for tenant hangars are presently set at competitive rates, comparable to hangar rents at Airport Authority airports; all tenant hangar leases are month-to-month tenancies and are available to aircraft owners on a first-come, first

served basis. (Stipulation, para. 18).

19. In the event the tenant hangars at issue are considered non-exempt, the County Airport Board will be required to pay real estate taxes to Whiteside County which will simply require the County Board to appropriate additional funds to its own Airport Board to fund the payment of such real property taxes. (Stipulation, para. 19).

20. The Airport has, since its inception, paid real estate taxes on the farm land surrounding the Airport's runways and buildings which land is leased for farming purposes under three year leases. The Airport Manager would testify that the Airport Board pays such real estate taxes because it considers renting of farm land under cultivation to be a non-public use. (Stipulation, para. 20).

CONCLUSIONS OF LAW:

Whiteside County Airport is municipally owned and operated. The Airport was created under the "General County Airport and Landing Field Act." (Stipulation, para. 1). This Act provides that counties have the power to "locate, establish, acquire, own, construct, manage, maintain and operate" "airports, landing fields, or airport facilities," within their boundaries or any land adjacent thereto, "together with all land, appurtenances and easements necessary or useful in connection therewith." "Such power includes every kind of structure." 620 ILCS 40/1. The Act further provides that all land and appurtenances thereto "occupied by a county for any purpose specified in [620 ILCS 40/1] is "acquired, owned, leased or occupied for a public purpose." 620 ILCS 40/4.

The Whiteside County Airport Board acting on behalf of Whiteside County sought exemption for the hangars under 35 ILCS 200/15-75 which exempts from the

payment of property taxes “public grounds owned by a municipal corporation and used exclusively for public purposes.” Additionally, the Airport Board sought exemption under 35 ILCS 200/15-60(b), which provides that public buildings “belonging to any county, township or municipality, with the ground on which the buildings are erected” are exempt from property taxes.

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).

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, in this case the Whiteside County Airport Board, 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).

The issue presented by the Whiteside County Airport Board, *i.e.* whether the leased hangars at a municipally-owned airport are exempt, was succinctly addressed by the Illinois Appellate Court in Marshall County Airport Board v. Department of Revenue, 163 Ill. App. 3d 874 (3d Dist. 1987). In Marshall County, the Airport Board sought exemption for tiedown areas and hangar space leased to private individuals. The Court noted that the airport was generally open for public use, but certain facilities, including leased airplane tiedown areas and hangar space, were leased to private parties for profit. *Id.* at 875. The Court upheld the Department's denial of exemption for the leased areas stating as follows:

To resolve this question, the Illinois Supreme Court has supplied the necessary authority in People ex rel. Lawless v. City of Quincy (1946), 395 Ill. 190, 69 N.E.2d 892. The court noted that there is a difference between land owned by a municipal corporation and used for public purposes and that owned by the municipal corporation and leased to individuals. The Court, quoting Sanitary District of Chicago v. Hanberg (1907), 226 Ill. 480, 80 N.E.2d 1012, 1013, stated that the [municipal corporation] has leased part of its land to private individuals, and such lands, not being used for public purposes, are subject to taxation. (Lawless, 395 Ill. 198, 69 N.E.2d 892,896.)

It is reasonable to conclude from this statement that areas in a building owned by a municipal corporation and leased to private individuals, cannot be considered used for “public purposes” thereby precluding exemption under 35 ILCS 200/15-75 or 35 ILCS 200/15-60(b).

The Whiteside County Airport Board argues in its “Memorandum” that Marshall County Airport Board was “effectively overruled” by Harrisburg-Raleigh Airport Authority v. Department of Revenue, 126 Ill. 2d 326 (1989). (Memorandum, pp. 5-6). The plaintiffs in Harrisburg-Raleigh were two airport authorities seeking exemption for property they owned. The Harrisburg-Raleigh Airport Authority’s property contained hangars which were leased to private individuals on a monthly basis. The Fox Valley Airport Authority owned eight parcels of land, six of which contained hangars or aircraft storage facilities that were leased to private individuals. One of the six parcels was subject to a long term lease under which the privately owned storage building was taxed to the lessee. The remaining parcels were leased on a monthly or yearly basis.

In Harrisburg-Raleigh, both plaintiffs contested the Department’s denial of exemption for their property. The plaintiffs claimed that the leased property was exempt, not under 35 ILCS 200/15-60 or 35 ILCS 200/15-75 as Whiteside County Airport Board claims in the instant matter, but under 35 ILCS 200/15-160 of the Property Tax Code, entitled “Airport Authorities and Airports.” 35 ILCS 200/15-160 provides a property tax exemption for “all property belonging to any Airport Authority and used for Airport Authority purposes.” There is no “specific language” in 35 ILCS 200/15-160 “excluding from the exemption, airport-authority property leased to private parties or used in part for private purposes.” Harrisburg-Raleigh at 334. It must be noted, however, that Whiteside

County Airport is not “airport authority property” and, accordingly, cannot claim exemption under 35 ILCS 200/15-160.

In Harrisburg-Raleigh, the Illinois Supreme Court agreed that the plaintiffs’ property qualified for exemption under 35 ILCS 200/15-160. The Court rejected the Department’s contention that the property was not exempt because it was leased to private individuals. The Court noted the existence of 35 ILCS 200/15-75, “and this provision has previously been interpreted to include municipal airports.” *Id.* at 334. However, “the General Assembly’s inclusion of a separate exemption for airport-authority uses suggests that [35 ILCS 200/15-160] is to be construed at least broadly enough to encompass private uses of airport-authority property which bear a real and substantial relation to the authority’s statutory purpose of maintaining a public airport.” *Id.* at 333. The fact that the leases at Harrisburg-Raleigh Airport were “short-term, in no case exceeding one year, and are available to all members of the flying public on a first come, first served basis strongly supports the conclusion that they serve a public airport’s statutory function as a terminus for private, as well as public and commercial aircraft.” “The goal of assuring regular users of the airport that they will be able to store their craft in secure facilities bears a real and substantial relation to a public airport’s function of serving as a terminus for private aircraft.” *Id.* at 335.

Thus, Harrisburg-Raleigh did not “effectively overrule” Marshall County as Whiteside County Airport Board argues in its Memorandum. The Court stated succinctly that Marshall County is “distinguishable” from Harrisburg Raleigh because Marshall County involves a “municipally owned airport, rather than an airport authority.” The

leased areas in Marshall County “were therefore nonexempt” under 35 ILCS 200/15-75 of the Property Tax Code. *Id.* at 336.

Whiteside County Airport is a municipally owned airport, and not airport authority property. I am forced to conclude from the Court’s comment in Harrisburg-Raleigh that there is a clear distinction between exemptions under 35 ILCS 200/15-160 and exemptions sought under 35 ILCS 200/15-75 and 35 ILCS 200/15-60. Under 200/15-160, exemption is based on ownership of the property by an airport authority. Under 200/15-75 and 200/15-60, exemption is based on the use of the property for public purposes. Property of a municipally owned airport being leased to private individuals is not being used for public purposes.

Whiteside County Airport Board next argues that its position that the hangars are exempt is “fully supported” by Franklin County Board of Review v. Department of Revenue, 346 Ill. App. 3d 833 (5th Dist. 2004). Franklin County is not an airport case. In Franklin County, the county appealed the Department’s grant of a property tax exemption for property owned by the Rend Lake Conservancy District. The District was created pursuant to the “River Conservancy Districts Act” which gave conservancy districts the power to establish recreational grounds and to construct buildings for recreational purposes. 70 ILCS 2105/1. The District operated a restaurant, hotel and condominium complex on the property and was granted exemption for these areas pursuant to 35 ILCS 200/15-75. The “vast majority” of the individuals who stayed at the hotel in the year at issue stayed one to two days. The hotel logged a total of 7,665 room nights. One of the condominiums was leased for four months, three others were leased for three months and

the remaining condominiums were leased to different people for one to three days at a time. *Id.* at 838.

On administrative review of the Department's grant of exemption, the county argued that the hotel and condominiums operated by the District could not be exempt because they were rented to private individuals. The Appellate Court affirmed the exemption finding that the "provision of overnight lodging, by way of daily rentals and short term leases, bears a real and substantial relation to Rend Lake's public purposes of providing recreational facilities and promoting public safety, comfort and convenience." *Id.* at 843.

In order for me to find that the leased hangars at Whiteside County Airport were exempt in 2007, I would have to conclude that the leasing of these hangars "bears a real and substantial relation" to Whiteside County's maintenance of the Airport for public purposes. The parties in this matter stipulated to such statements as "the Airport is operated for a public purpose" (Stipulation, para. 3), tenant hangars are "integral" to the operation of "an airport" (Stipulation, para. 7), and tenant hangars "are considered vital to the operation of the Airport" (Stipulation, para. 8). In light of the fact that the exemption claimed by Whiteside County Airport Board relies on the "public" nature of the facilities, the statements, above, represent legal conclusions and, as such, are not binding on this tribunal. While parties may bind themselves by stipulation, they cannot bind a court by stipulating to a question of law or the legal effect of facts. Domagalski v. Industrial Com., 97 Ill. 2d 228, 235 (1983).

The record in this case does not support a conclusion that the leasing of hangars at the Airport is "integral" or "vital" to its operation or that the leasing of hangars "bears a

real and substantial relation” to Whiteside County’s maintenance of the Airport for public purposes. There is no evidence in the record of this case that shows that Whiteside County had a legal responsibility to open up an Airport. The fact that Whiteside County chose to open an Airport does not, *ipso facto*, lead to the conclusion that leased hangars are used for public purposes. The Airport does not have scheduled airline service. If there was scheduled airline service, I could conclude that the general public was being served by the Airport. The Airport does offer flying instruction, engine and radio maintenance and charter service. (Stipulation, para. 6). It is reasonable to conclude on this record that these “offerings” benefit a very small group of people, and indicate further that the general population of Whiteside County, the “public,” is very narrowly served by the Airport.

Furthermore, as the Department points out in its “Memorandum In Response,” of the twenty hangar leases submitted to the Department by the Applicant along with its application for exemption, the most recent lease is dated October, 2007. Nine of the leases were entered into between 1994 and 1998, six were entered into between 2002 and 2005, three were entered into in 2006 and one is undated. (Memorandum In Response, p. 5).

The Whiteside County Airport hangar leases are not for overnight, daily or short-term periods as the hotel and condominium leases were in Franklin County. In Franklin County, the hotel logged a total of 7,665 room nights. If two persons rented each room per room night, the hotel accommodated 15,330 members of the “public” for a relatively short period of time. On the other hand, the hangars at Whiteside County Airport benefit approximately 20 leaseholders, in some cases for as long as fifteen years. Whiteside

County Airport Board has failed to prove that these long term leases to a few private individuals bear a real and substantial relation to Whiteside County's maintenance of an airport for "public purposes." The hangar leases, the charter service, the flying instruction and the engine and radio maintenance service force me to conclude that Whiteside County Airport satisfies private interests more than any "public purpose."

In Whiteside County Airport Board's Memorandum, the Board states that "[I]n the event that the parcel is considered available for taxation, the hangars that were vacant in 2008 (4F, 4G, 5D, 5G, 5H, 5I, 6H, 6J) and the hangars used by the [Illinois State Police] (5C, office at end of Hangar #4) should remain exempt." "As the hangars were vacant and not leased out, they remain exempt as being owned and operated by the County." (Memorandum, p. 7-8).

The exemption requested and subsequently protested by the Applicant was for assessment year 2007, as evidenced by the Department of Revenue's Docket Number (07-98-40), and the exemption certificate issued May 22, 2008, which exempted P.I.N. 17-10-126-001 and hangars 5B and 5E "for 100% of the 2007 assessment year." Additionally, the "Date of Board's action" on the PTAX-300 was March 7, 2008. On that date, the County Board of Review was still hearing 2007 exemptions, and in fact, heard 2007 exemptions until March 20, 2008. Accordingly, I can make no recommendation regarding the hangars that were vacant in 2008, and there is no evidence in the record as to the status of these hangars in 2007.

The Whiteside County Airport Board's Memorandum states that "hangars operated by the Illinois State Police for storage and office space are also exempt as government use." The Stipulation in the record states that "Hangar bay 5C is leased by

the Illinois State Police, for storage of its aircraft for its use in law enforcement.” “The State Police also occupies a small office at the end of Hangar #4.” (Stipulation, para. 16). A lease between Whiteside County Airport Board and the Illinois State Police was submitted to the Department with the PTAX-300. The lease calls for “annual rent” of \$10,428 in 2007. There is no evidence in the record as to the dimensions of the “small office” leased by the Illinois State Police at the end of Hangar 4. It is unclear from the record which exemption for “government use” the Board is seeking for Hangar 5C and the small office. Accordingly, I can make no recommendation for exemption in 2007 for Hangar 5C and the “small office” at the end of Hangar 4.

WHEREFORE, for the reasons stated above, I recommend that the Department’s exemption certificate which denied exemption for all hangars except hangars 5B and 5E, on Whiteside County P.I.N. 17-10-126-001 should be affirmed.

ENTER:

January 20, 2010

Kenneth J. Galvin
Administrative Law Judge