PT 16-03
Tax Type: Property Tax
Tax Issue: Airport Authority Uses

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

THE DEPARTMENT OF REVENUE OF THE STATE OF ILLINOIS	
v.	**Docket # 15-PT-009** **Tax Year 2014**
SPRINGFIELD AIRPORT AUTHORITY **Applicant**	**Dept. # 14-84-105 to 123**

RECOMMENDATION FOR DISPOSITION

Appearances: Robin Gill, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; James M. Lestikow of Hinshaw & Culbertson LLP for Springfield Airport Authority

Synopsis:

Springfield Airport Authority ("applicant") filed applications for property tax exemptions for the year 2014 for 19 leasehold estates relating to 19 parcels of property located in Sangamon County. The applicant seeks an exemption pursuant to section 15-160 of the Property Tax Code (35 ILCS 200/1-1 *et seq.*) on the basis that the property is used for "Airport Authority purposes." The Sangamon County Board of Review deferred to the Department of Revenue ("Department") for a decision. The Department issued denials. The applicant timely protested the Department's decision. The parties waived their right to an evidentiary hearing and asked that the matter be resolved based on the stipulated facts and the attached exhibits. Both parties filed briefs in support of their positions. After reviewing the record, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. The applicant is an airport authority created pursuant to the Airport Authorities Act ("Act") (70 ILCS 5/1 *et seq*.). By virtue of the authority granted under the Act, the applicant owns, operates, and maintains the Abraham Lincoln Capital Airport ("airport"), a commercial and general aviation airport, and owns property leased to various tenants including farms. As a commercial airport, it accommodates several scheduled commercial flights daily. As a general aviation airport, it accommodates a mix of air traffic ranging from single engine, propeller-driven aircraft and helicopters to large, high performance jets. (Stip. #1)
2. The applicant has filed property tax exemption applications for 19 parcels identified with 19 different parcel identification numbers. The parcels are exempt from taxation pursuant to section 15-160 of the Property Tax Code (35 ILCS 200/15-160); however, the applications that are the subject of this appeal are for the leasehold estates. (Stip. #2)
3. Each of the applicant's 19 exempt parcels are identified with an individual parcel number, while the leasehold estates share the same parcel identification number but have a .4 added, which identifies it as a leasehold parcel. For example, parcel number 14-04-378-023 identifies the underlying exempt fee estate for one of the parcels, and parcel number 14-04.4-378-023 identifies the leasehold estate for that particular parcel. (Stip. #3)
4. The parcel numbers for the leasehold estates/parcels are as follows: 14-04.4-378-023;14-08.4-100-014; 14-08.4-200-034; 14-08.4-200-035; 14-08.4-300-005;14-08.4-400-005; 14-08.4-400-006; 14-09.4-126-042; 14-04.4-400-008; 14-09.4-201-016; 14-09.4-176-

038; 14-09.4-251-027; 14-16.4-100-005; 14-17.4-200-002; 14-18.4-400-033; 14-18.4-400-034; 14-20.4-201-004; 14-20.4-226-001; and 14-07.4-400-069. (Stip. #4)

5. The applicant filed a timely written request, pursuant to section 8-35 (35 ILCS 200/8-35), for a formal hearing of the Department's denial of its applications, setting forth the applicant's arguments based on section 15-160 as to why the denial was incorrect and as to why the denial should be reconsidered and reversed. (Stip. #5)
6. The properties at issue are parcels leased by the applicant to Ted Mies, a for-profit commercial farmer, consisting of a total of 716.1 acres for farm year 2014. The lessee has control over the leased land except for the applicant's rights to enter on the land to maintain fences or other improvements on the land, if any. The applicant did not maintain any other portion of the land in 2014, and no aviation or aeronautic activities occurred on the surface of the land, although the crucial aviation activities to be protected occur directly over the land. (Stip. #7)
7. The Department's Exhibit #1 includes the exemption applications and the denials by the Department for each leasehold estate/parcel. (Stip. #6)
8. The applicant's Exhibit #1 includes Group Exhibits A through I. A brief description of the group exhibits is contained in the following paragraphs. (Stip. #8)
9. Group Exhibit A from the applicant's Exhibit #1 includes the following documents for each of the subject parcels: Notice to applicant from Sangamon County Board of Review; PTAX-300 Application filed by the applicant with the Board of Review deferral to the Department; Sangamon County GIS for the parcel; the 2014 payable in 2015 assessment notice; deed/title evidence; and an affidavit describing use of parcel for airport purposes. (Stip. #9)

10. Group Exhibit B from the applicant's Exhibit #1 includes the applicant's unaudited financial statement for 2014. (Stip. #10)
11. Group Exhibit C from the applicant's Exhibit #1 includes the airport corporate limits legal description. (Stip. #11)
12. Group Exhibit D from the applicant's Exhibit #1 includes copies of the lease agreement and amendments for all of the subject parcels, which are unimproved and subject to a lease dated March 1, 2008 as amended in March of 2010, July 26, 2011, and January of 2014. (Stip. #12)
13. Group Exhibit E from the applicant's Exhibit #1 includes parcels identified in a December 1, 1982 letter to the Sangamon County Board of Review that were subject to the Clear-zone expansion of the airport requiring protection of operating areas by limiting use and prohibiting construction of improvements (14 CFR 77). (Stip. #13)
14. Group Exhibit F from the applicant's Exhibit #1 includes parcels identified in a letter dated June 25, 1985 to the U.S. Department of Transportation that are subject to the recorded restriction that the applicant cannot sell or transfer any of the above real estate without the written approval of the State of Illinois. The letter was accompanied by a Declaration imposing the restriction adopted by the applicant and recorded in the Sangamon County Recorder of Deeds on June 20, 1985. (Stip. #14)
15. Group Exhibit G from the applicant's Exhibit #1 includes the sales tax exemption for the applicant. (Stip. #15)
16. The land subject to the appeal, except Farm Number 7, is located wholly or partially in tracts subject to the Code of Federal Regulations 14 C.F.R. 77, Subpart C, 77.13-77.19, which mandates that it must be protected by the applicant and preserved to keep out any

"objects affecting navigable air space" other than navigational aids and aviation buildings. A copy of the Regulation is attached as Exhibit H. Those areas designated under the said regulations to be unobstructed are described on the plat attached as Exhibit I as "Part 77 Surface" bounded by the red dotted line and "Runway Approach Surface" under Part 77 bounded by the blue dotted line as shaded blue. All are located outside the restricted areas of the applicant. No uses that would create a real or potential hazard to aviation and the navigation of aircraft can be erected on or placed on that land. Farming is a suitable and permitted activity for that land. (Stip. #16)

17. The applicant is subject to several Grant Assurances, compliance being necessary to continue to qualify for Airport Improvement Grants. Two applicable Grant Assurances are found in No.'s 20 and 21 in Airport Sponsor Grant Assurances, imposed by the Federal Aviation Administration ("FAA"), which is the entity governing the operation of the applicant, a copy of which is attached as Exhibit J. They require appropriate action to remove hazards to protect visual and instrument approaches, and mitigate them from future development (See #20). No. 21 requires appropriate action to restrict use of land in the immediate vicinity to activities compatible with normal airport operations. (Stip. #17)

18. Planting crops to generate revenue is also consistent with Grant Assurances No. 24 and 25. (See Exhibit J) Airport Improvement Program grants are conditioned upon several assurances. In Assurance No. 24, it requires the Authority "will maintain a fee and rental structure for the facilities and services at the Airport which will make the Airport as self-sustaining as possible." Additionally, Grant Assurance No. 25 states that "all revenue generated by the Airport will be expended by it for the capital or operating costs of the

Airport." Property taxes paid to a taxing district do not comply with that Grant Assurance. (Stip. #18)

19. U.S. Department of Transportation promulgated Advisory Circular on Airport Design issued 2/26/2014, Section 150/5300-13A, Chapter 2, Section 303, part b and Sections 306-31 – regarding approach surfaces to protect the use of runways. It establishes Runway Protected Zones as safety areas within which objects that would pose safety hazards must be removed or mitigated. A copy of the referenced sections is attached as Exhibit K. Those RSA's [sic] are depicted on the plat, Exhibit I, by the black dotted lines. (Stip. #19)
20. Under the Lease Agreement, the lessee is responsible for the property taxes if it is determined that the leasehold (income generated) is to be taxed. The applicant will be responsible for the taxes if it is determined that the farm should be taxed on the value of the land. (Ex. D, p. 5)

CONCLUSIONS OF LAW:

It is well-established under Illinois law that taxation is the rule, and tax exemption is the exception. Eden Retirement Center, Inc. v. Department of Revenue, 213 Ill. 2d 273, 285 (2004). "[A]ll property is subject to taxation, unless exempt by statute, in conformity with the constitutional provisions relating thereto." *Id*. Statutes granting tax exemptions must be strictly construed in favor of taxation. *Id*. at 288; Chicago Patrolmen's Association v. Department of Revenue, 171 Ill. 2d 263, 271 (1996); People ex rel. County Collector v. Hopedale Medical Foundation, 46 Ill. 2d 450, 462 (1970). All facts are to be construed and all debatable questions resolved in favor of taxation. Eden Retirement Center, Inc., at 289. Every presumption is against the intention of the State to exempt the property from taxation. Oasis, Midwest Center

for Human Potential v. Rosewell, 55 Ill. App. 3d 851, 856 (1st Dist. 1977). Whenever doubt arises, it must be resolved in favor of requiring the tax to be paid. Quad Cities Open, Inc. v. City of Silvis, 208 Ill. 2d 498, 508 (2004).

The burden of proof is on the party who seeks to qualify its property for an exemption. Eden Retirement Center, Inc., *supra*; Chicago Patrolmen's Association, *supra*. "The burden is a very heavy one." Provena Covenant Medical Center v. Department of Revenue, 236 Ill. 2d 368, 388 (2010) ("Provena I"); see also Oasis, Midwest Center for Human Potential, *supra*. The party claiming the exemption bears the burden of proving by clear and convincing evidence that the property in question falls within both the constitutional authorization and the terms of the statute under which the exemption is claimed. Eden Retirement Center, Inc., *supra*; Board of Certified Safety Professionals of the Americas, Inc. v. Johnson, 112 Ill. 2d 542, 547 (1986) (citing Coyne Electrical School v. Paschen, 12 Ill. 2d 387, 390 (1957)).

Authority to grant property tax exemptions emanates from article IX, section 6 of the Illinois Constitution of 1970. Section 6 authorizes the General Assembly to exempt certain property from taxes and 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. Ill. Const. 1970, art. IX, §6.

The constitution does not require the legislature to exempt property from taxation; an exemption exists only when the legislature chooses to create one by enacting a law. Eden Retirement Center, Inc., at 290. "The legislature cannot add to or broaden the exemptions that section 6 of article IX specifies." *Id*. at 286. By enacting an exemption statute, the legislature may place restrictions, limitations, and conditions on an exemption, but the legislature cannot make the exemption broader than the provisions of the constitution. *Id*. at 291.

Pursuant to this constitutional authority, the General Assembly enacted section 15-160 of the Property Tax Code, which provides, in relevant part, as follows:

> All property belonging to any Airport Authority and used for Airport Authority purposes or leased to another entity, which property use would be exempt from taxation under this Code if it were owned by the lessee entity, is exempt. … 35 ILCS 200/15-160(a).

The applicant argues that the income from the property in this case should be exempt from tax because the property is being used for "Airport Authority purposes" as required under section 15-160. The applicant states that in order to maintain aircraft and passenger safety, the FAA has restricted the development of the property in this case. Leasing the property for farming purposes is one of the uses that meets the FAA height requirements. The applicant argues that this use is for "Airport Authority purposes" because this use is "related to aviation." In other words, the sole purpose for the various height restrictions in the zones around the airport is for safety concerns during the arrival and departure of aircraft. The applicant believes that because of these restrictions on the development of this land, the land is being used for aviation purposes.

Part 77 of Title 14 of the Code of Federal Regulations concerns "Safe, Efficient Use, and Preservation of the Navigable Airspace." See 14 C.F.R. §77 *et seq*. One of the purposes of Part 77 is to set the standards for determining obstructions to air navigation and navigational and communication facilities. 14 C.F.R. §77.1. Section 77.19 is titled "Civil airport imaginary surfaces" and includes the following five different types of surfaces with respect to runways: (1) primary, (2) approach, (3) transitional, (4) horizontal, and (5) conical. 14 C.F.R. §77.19. Each surface is described in terms of feet and slopes beyond and above an airport's runways. The height restrictions vary depending on the proximity to the airport.

The applicant's airport has 3 runways: (1) a short north/south non-instrument runway; (2) a longer northeast/southwest instrument runway; and (3) a longer northwest/southeast instrument runway. (Ex. I) The "primary" surface of the applicant's runway extends 200 feet beyond each

end of the runway. 14 C.F.R. §77.19(c). The "approach" surface extends outward and upward from each end of the primary surface, and its width and slope vary depending on the type of runway with the greatest width being 16,000 feet and longest horizontal distance being 10,000 feet. 14 C.F.R. §77.19(d). The "transitional" surface extends outward and upward at right angles to the runway centerline, and the centerline extends at a slope of 7 to 1 from the sides of the primary surface and the approach surface out to a distance of 5,000 feet. 14 C.F.R. §77.19(e). The "horizontal" surface is a horizontal plane 150 feet above the airport elevation, the perimeter of which is measured from the center of each end of the primary surface of each runway and is either 5,000 or 10,000 feet depending on the type of runway. 14 C.F.R. §77.19(a). The "conical" surface extends outward and upward from the periphery of the horizontal surface at a slope of 20 to 1 for a horizontal distance of 4,000 feet. 14 C.F.R. §77.19(b). The applicant provided a Plat map with dotted lines and portions of it shaded red and blue to show these surfaces at the applicant's airport. (Ex. I) With the exception of a portion of the property that the applicant has labeled Field 7, all of the parcels at issue fall within either the approach or the transitional surfaces, and all of the parcels are within the horizontal surface.

Some of the applicant's parcels also fall within an area known as the Runway Protection Zone ("RPZ") (formerly called Clear Zone). The RPZ is essentially a clear area beyond each end of the runways, and it falls within the approach surface. The RPZ is trapezoidal in shape, and the dimensions vary depending on the type of runway. The Approach RPZ is larger and overlaps the Departure RPZ; the Approach RPZ extends from a point 200 feet from the runway threshold for a distance as far as 2,500 feet, which is much shorter than the approach surface.[1]

[1] In addition to the RPZ, there are other areas around the end of the runways, such as Runway Safety Areas and Runway Object Free Areas, which have restrictions with respect to objects in the area. AC 150/5300-13A, §310, p. 72. These areas are smaller and closer to the runways than the RPZ.

AC 150/5300-13A, §310, p. 73-74, 93 (Ex. K, L). According to an Advisory Circular issued by the FAA, the function of the RPZ is as follows:

> The RPZ's function is to enhance the protection of people and property on the ground. This is best achieved through airport owner control over RPZs. Control is preferably exercised through the acquisition of sufficient property interest in the RPZ and includes clearing RPZ areas (and maintaining them clear) of incompatible objects and activities. … Where practical, airport owners should own the property under the runway approach and departure areas to at least the limits of the RPZ. It is desirable to clear the entire RPZ of all above-ground objects. Where this is impractical, airport owners, as a minimum, should maintain the RPZ clear of all facilities supporting incompatible activities. AC 150/5300-13A, §310, p. 71.

For the RPZ land, farming is one of the permissible uses. AC 150/5300-13A, §310, p. 73.

The applicant argues that the income that it receives from the use of the property for farming purposes should be exempt because the FAA restricts the development and uses of the property, and therefore the property is being used for "Airport Authority purposes." The applicant states that the FAA restrictions are necessary for aircraft and passenger safety, and the use of the property for farming purposes is substantially related to the applicant's purpose of maintaining a public airport. The applicant claims that this finding is consistent with the decision in Harrisburg-Raleigh Airport Authority v. Department of Revenue, 126 Ill. 2d 326 (1989), where the Supreme Court found that hangars leased to private individuals were exempt because the use of the property bears "a real and substantial relation to the authority's statutory purpose of maintaining a public airport." *Id*. at 336.

The applicant also states that in order for it to receive grant income from the FAA for airport improvements, the applicant must comply with the FAA's Grant Assurances.[2] Grant

[2] Section 47107 of Title 49 of the United States Code indicates that the Secretary of Transportation may approve a grant application for airport development only if the Secretary receives certain written assurances. 49 U.S.C. §47107.

Assurance #21 is titled "Compatible Land Use" and provides that the airport authority must do the following:

> Take appropriate action, to the extent reasonable, including the adoption of zoning laws, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft. In addition, if the project is for noise compatibility program implementation, it will not cause or permit any change in land use, within its jurisdiction, that will reduce its compatibility, with respect to the airport, of the noise compatibility program measures upon which Federal funds have been expended.[3] (Ex. J, p. 10)

The applicant also refers to the following Grant Assurances:

> 24. **Fee and Rental Structure**
>
> [The airport authority] will maintain a fee and rental structure for the facilities and services at the airport which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport, taking into account such factors as the volume of traffic and economy of collection. …
>
> 25. **Airport Revenues**
>
> a. All revenues generated by the airport … will be expended by it for the capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport and which are directly and substantially related to the actual air transportation of passengers or property; or for noise mitigation purposes on or off the airport. … (Ex. J, p. 12)

The applicant believes that if it were to leave the property unfarmed, it could potentially lose its grants for failing to comply with Grant Assurances #24 and #25. In the applicant's view, leasing the land for farming purposes generates income for airport purposes in furtherance of the applicant's "duty" under Grant Assurances #24 and #25. According to the applicant, the use of the property for farming is the most compatible use for the FAA's restrictions while fulfilling the FAA's "income generation requirements." (App. Brief p. 14) The applicant contends that because it must comply with these assurances in order to receive grants to improve the airport,

[3] The applicant has also cited sections of the FAA Compliance Manual regarding this Grant Assurance, but the applicant did not include a copy of the Compliance Manual in its exhibits.

the applicant believes that if it does not receive income from the farming use, it could potentially lose its grants.

In response, the Department argues that in order to receive an exemption under section 15-160, the applicant must establish either (1) the property is leased to another entity and its use would be exempt from taxation if it were owned by the lessee; or (2) the property is used for "Airport Authority purposes." The Department states that it is clear that the property is not exempt under the first scenario, and the only issue in this matter is whether the property is used for "Airport Authority purposes." The Department notes that the parties agreed that there is no aviation or aeronautic activities on the surface of the land.

The Department contends that regardless of the regulations and restrictions relating to the property, this tribunal should look solely at section 15-160; the statutes and regulations cited by the applicant should not be applied in a manner that effectively defeats the well-settled rules that apply to property tax exemption cases. Exemption provisions are strictly construed with all doubts and debatable questions resolved in favor of taxation. The restrictions cited by the applicant should be examined through the Supreme Court's decision in Harrisburg, *supra*, wherein the court's definition of "Airport Authority purposes" was established and subsequently followed in the case of DuPage County Airport Authority v. Department of Revenue, 358 Ill. App. 3d 476 (2nd Dist. 2005). The Department notes that in both of those cases the court found that property that was used as farmland was not entitled to an exemption as property used for airport authority purposes.

The Department believes that under this case law, it is clear that leasing the property for farming purposes does not amount to an airport authority purpose regardless of the federal restrictions and requirements concerning the use of the property. The Department points out that

in the Harrisburg case, the court included the following, which is the purpose of the Airport Authorities Act:

> The establishment and continued maintenance and operation of safe, adequate and necessary public airports and public airport facilities … and the creation of airport authorities having powers necessary or desirable for the establishment and continued maintenance and operation of such airports and facilities are declared and determined to be in the public interest, and such powers and the corporate purposes and functions of such authorities, as herein stated, are declared to be public and governmental in nature and essential to the public interest. Harrisburg at 332.

The court also looked to the definition of the terms "Airport" and "Public Airport" in the Act. The court found that property leased for farming purposes was not used for airport authority purposes because the use was "unrelated to aviation" and is not a tax exempt "airport purpose." *Id*. at 343.

The Department states that in DuPage County, the airport authority owned property that was leased to various third parties for use as a golf course, office building, tie-down area for aircraft, auto repair facility, commercial cellular tower, and farms. After significant discussion of the Harrisburg case, the court found that even though the Property Tax Code and the Airport Authorities Act had been revised since the Harrisburg decision, the court's analysis concerning the meaning of "Airport Authority purposes" was still applicable. The DuPage County court then found that after applying the analysis from Harrisburg, none of the property was entitled to an exemption, including the property used as farmland. The Department argues that the facts in the present case are similar to those in Harrisburg and DuPage County, and the property leased by the applicant to a farmer for agricultural purposes is not entitled to a leasehold exemption because the use is unrelated to aviation and does not constitute "Airport Authority purposes."

In reply, the applicant argues that the DuPage County case is distinguishable because that airport was only a general aviation airport and not a commercial airport like the one the applicant

operates. The applicant claims that additional regulations apply to the operation of a commercial airport. (Ex. O) The applicant also contends that the restrictions on development combined with the "mandate" to make a profit pursuant to Grant Assurances #24 and #25 is using the property for airport purposes.

The applicant states that in the Harrisburg and DuPage County cases, the courts found that property that was used for farming and held for future expansion was not used for an "airport purpose." The applicant claims that the courts have not addressed whether ownership of land that is used for farming because it is restricted as RPZs is an "airport purpose." The applicant states that the clear sight lines needed for pilots and control tower personnel for take offs and landings must be preserved for the land surrounding the airport and not just the ends of the runways. The applicant believes that its position is consistent with the cases cited by the Department. Nothing in the cases indicates that the courts considered the Grant Assurances provisions requiring the production of income in conjunction with the safety requirements of the FAA. The applicant claims that with FAA mandates to generate income for airport purposes under Grant Assurances #24 and #25 and the FAA restrictions on property development, the applicant should not be precluded from renting the property for farming purposes.

As the Department has indicated, the case law supports a finding that the leasehold estates are not entitled to an exemption. Because the Code does not define the term "Airport Authority purposes," the court in Harrisburg looked to the definition of the terms "Airport" and "Public Airport" in the Airport Authorities Act ("Act") and also referred to the purpose of the Act, which was cited previously. The court found that hangars leased to private individuals are exempt, noting that the leases "serve a public airport's statutory function as a terminus for

private, as well as public and commercial, aircraft." Harrisburg, at 335. The court added the following:

> The General Assembly's inclusion of a separate exemption for airport-authority uses suggests that this exemption 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. Harrisburg at 336.

The court also found, however, that property that was held for future expansion and leased for use as a farm was not exempt. With respect to this finding, the court stated as follows:

> We assume for the sake of argument that vacant land, held only for expansion and not used for any private, non-airport-authority-related purpose would indeed be exempt. But we are unable to agree … that property used *primarily* for a nonexempt purpose will be exempt if it is also used for an exempt purpose. If this was true, an airport authority could just as easily acquire apartment buildings or gold mines, and hold the land for future expansion while garnering the profits of its enterprises free of property tax. We agree with the airport authority that "all" of the property is being held for future expansion in the sense that all of the geographic area will one day contain airport facilities. But we cannot agree that the current, primary uses of these properties are airport related. (emphasis in original) Harrisburg at 342-343.

In the present case, the primary use of the property is for a nonexempt purpose. The property is being leased for farming purposes, which is one of the permissible uses for any property that is located in the Runway Protection Zones.[4] AC 150/5300-13A, §310, p. 73. Some of the property is also serving the purpose of allowing clearance and visibility for approaching or departing aircraft. Under Harrisburg, when property serves dual purposes, the *primary* purpose of the property determines whether it is entitled to an exemption. Although the federal regulations restrict the development of the property, the regulations also allow the property to be used for farming, which is its primary use. This nonexempt purpose does not warrant an exemption.

[4] Not all of the property at issue is located within the RPZs (Ex. I), so the restrictions on the use are not the same for all of the property.

The court's decision in DuPage County also supports this conclusion. After the decision in Harrisburg, the General Assembly amended section 15-160 to include the following italicized language:

> All property belonging to any Airport Authority and used for Airport Authority purposes *or leased to another entity, which property use would be exempt from taxation under this Code if it were owned by the lessee entity,* is exempt. … (emphasis added) 35 ILCS 200/15-160(a).

The court in DuPage County found that this amendment was not intended to alter the law as announced in Harrisburg. The court concluded that there are now two ways in which airport authority property may qualify for a tax exemption under section 15-160: (1) the property may be leased to a third party, where the use of the property by the third party would otherwise be exempt under the Code if the lessee owned the property, and (2) the property may be used for an airport authority purpose. DuPage County at 491. Under the second scenario, it does not matter whether the property is leased. *Id*. In the present case, the first scenario for an exemption does not apply because if the lessee (farmer) owned the property, the use to which the farmer puts the property would not be exempt under the Code.

After the decision in Harrisburg the General Assembly also amended the definition of "Facilities" in the Act to include "real estate, tangible and intangible personal property, and services used or useful for commercial and recreational purposes." 70 ILCS 5/1. The airport authority argued that this new definition of the word "Facilities" indicates that the phrase "Airport Authority purposes" includes commercial and recreational uses. The court found that the amendment to the definition was "insufficiently clear (and too far attenuated) to evince a legislative intent to change the holding in Harrisburg." *Id*. at 496. The court also stated as follows:

> Declaring all commercial and recreational uses, along with airport-related uses, to be tax exempt would not only create a substantial tax loophole to be exploited by private lessees, but it would also render virtually meaningless the limitation in the

Code requiring that exempt land be used for airport authority purposes. *Id*. at 497.

After determining that the legislature did not intend to change the definition of "Airport Authority purposes" from the one articulated in Harrisburg, the court found that the property at issue in that case (the farmland, golf course, etc.) did not meet the standard for "Airport Authority purposes" under the Code.

A similar conclusion must be reached in the present case because the primary use of the property is not for "Airport Authority purposes" as the Harrisburg court determined the meaning of that phrase. The primary use of the property is for farmland, which is not an airport use. The applicant has argued that the DuPage County case is distinguishable because that airport was only a general aviation airport and not a commercial airport like the one the applicant operates, but that distinction does not affect the primary use of the property. In addition, Grant Assurances #24 and #25 do not "mandate" that the applicant use the property to make a profit, as the applicant argues. The Grant Assurances require the applicant to maintain a fee and rental structure that will make the airport as self-sustaining as possible, and they require the applicant to use its revenue for capital, operating costs, or noise reduction. They do not "require" the property to be used for the production of income. As the court stated in Harrisburg, an airport authority cannot use its property for purposes unrelated to aviation without paying taxes. Harrisburg at 344. If the applicant chooses to lease its property for farming purposes, the income is subject to tax.

Recommendation:

For the foregoing reasons, it is recommended that the applicant's request for an exemption for the 19 leasehold estates be denied.

Linda Olivero
Administrative Law Judge

Enter: April 29, 2016