

STATE OF ILLINOIS  
IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT  
CHAMPAIGN COUNTY

OSF HEALTHCARE SYSTEM, )  
Plaintiff, )  
v. ) No. 19-MR-644  
THE CHAMPAIGN COUNTY )  
BOARD OF REVIEW, et. al, )  
Defendants. )

## Summary Judgment Order

The Champaign County Treasurer taxed OSF Healthcare System over \$1.4 million for OSF's property that houses the Heart of Mary Medical Center. OSF filed suit alleging that the Treasurer lacks the statutory authority to levy that tax because the Illinois Department of Revenue decided that OSF is entitled to a tax exemption. OSF claims that the Champaign County Board of Review failed to recognize the Department's decision and, as a result, the Treasurer issued the tax based on an unauthorized assessment.

I

Generally, courts “will not assume jurisdiction” in “taxation and revenue cases.” *Millennium Park Joint Venture, LLC v. Houlihan*, 241 Ill.2d 281, 295 (2010). However, taxpayers “may seek injunctive or declaratory relief in circuit court where the tax or assessment is unauthorized by law or where it is levied upon property exempt from taxation.” *Id.* at 296. “A tax is . . . ‘unauthorized’ when the taxing body has no statutory power to tax.” *Id.* at 295. “[P]ublic officials have no taxing power except that which is

delegated to them by the legislature.” *Id.* “The obligation of citizens to pay taxes is purely a statutory creation, and taxes can be levied, assessed, and collected only in the manner expressly spelled out by statute.” *Id.* Thus, while this Court currently lacks jurisdiction to consider the *substantive* exemption decision (i.e. whether or not OSF is ultimately tax exempt) it does have jurisdiction to consider whether the current taxation of OSF is authorized by statute.

## II

Section 16-70 of the Illinois Property Tax Code lays out the procedural mechanisms for a determination of property tax exemption.<sup>1</sup> When a taxpayer applies for an exemption, a county board of review hears the application. For homestead exemptions a board of review makes a final decision. However, for “non-homestead exemptions” like the one in this case, the decision of a board of review “shall not be final.” 35 ILCS 200/16-70. Instead, the board of review must forward a statement of facts to the Department and the Department determines “whether the property is legally liable to taxation.” *Id.* Upon making its determination, the Department must “notify the board of review of its decision, and the board shall correct the assessment if necessary.” *Id.* In other words, “the Board must follow the command of the Department.” *Housing Auth. of County of Marion v. The Dept. of Revenue*, 389 Ill. App. 3d 1005, 1008 (5th Dist. 2009). “[I]f 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.

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<sup>1</sup> The General Assembly titled § 16-70: “Determination of exemptions.”

Section 8-35 establishes the procedure for an “administrative protest” following a decision by the Department. *County of Marion*, 389 Ill. App. 3d at 1008. “[A]ny party to the proceeding who feels aggrieved by the decision may file an application for hearing.” 35 ILCS 200/8-35(b). “If a petition for hearing is filed, the Department shall reconsider the exemption decision and shall grant any party to the proceeding a hearing.” *Id.* Furthermore, “any party to the proceeding may file with the Director a written request for rehearing” after a decision on the protest hearing. *Id.* “A rehearing is discretionary.” *County of Marion*, 389 Ill. App. 3d at 1008. Only after the administrative protest is complete may a party seek judicial review of the substantive exemption decision. 35 ILCS 200/8-40.

### III

The following facts are uncontested.<sup>2</sup> In October of 2018, OSF sought a non-homestead tax exemption for the Heart of Mary property.<sup>3</sup> On February 21, 2019, the Board recommended that the exemption be denied. That recommendation produced a non-exempt tax assessment, which the Board certified in the County’s assessment books. Important to this case, the Treasurer levies taxes based on the certified assessments found

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<sup>2</sup> Summary judgment is appropriate only when there is no dispute about the material facts and the Court may rule “as a matter of law.” *Hagy v. McHenry County Conservation Dist.*, 190 Ill. App. 3d 833, 843 (2d Dist. 1989).

<sup>3</sup> The property is comprised of 51 individual parcels in Champaign and Urbana.

in the assessment books. As the Treasurer has indicated, she has “a non-discretionary legal duty to collect taxes” based on the assessment books.<sup>4</sup>

On April 5, 2019, contrary to the Board’s recommendation, the Department “determined that [OSF] met the exemption qualifications necessary to receive a non-homestead property tax exemption under 35 ILCS 200/15-86.”<sup>5</sup> The Department notified the Board of the decision on April 8, 2019.<sup>6</sup> The Board has not changed the non-exempt assessment found in the assessment books. Rather, the Board filed an administrative protest with the Department, which remains pending.<sup>7</sup>

The Treasurer, based on the non-exempt assessment found in the assessment books, issued tax bills to OSF in June 2019, for more than \$1.4 million. Had the assessment books been changed to reflect the Department’s exemption decision, OSF’s tax bill would have been just over \$3,000. OSF brought this suit seeking to compel the Board to recognize the Department’s exemption decision and, correspondingly, change the assessment books. The Board contends that it is under no obligation to recognize the Department’s decision until the administrative protest is complete.

#### IV

At the outset, the Court notes that nothing in this order should be read to reflect any opinion about the merits of the administrative protest occurring before the

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<sup>4</sup> Treasurer’s Disclosure filed on July 9, 2019.

<sup>5</sup> Exhibit A to Amended Complaint.

<sup>6</sup> Exhibit B to OSF’s motion for summary judgment.

<sup>7</sup> Exhibit C to OSF’s motion for summary judgment (letter of May 8, 2019).

Department. Resolution of that matter currently lies with the Department not the Court. The only issue properly before this Court is one of statutory construction: *when*, under § 16-70, must a board of review recognize the Department's exemption decision. "A declaratory judgment is an appropriate means to resolve a controversy related to statutory construction or interpretation." *Board of Trustees of Addison Fire Protection Dist. v. Stamp*, 241 Ill. App. 3d 873, 881 (2d Dist. 1993).

The Board believes that the Department erred in deciding that OSF was entitled to a tax exemption. While the Board is free to disagree with the Department's decision, they are not free to ignore it. The mandate of § 16-70 is clear. Once the Department notified the Board of its decision (as it did on April 8), the Board was statutorily obligated to recognize and effectuate the Department's decision. Section 16-70 states "the board shall correct the assessment if necessary." "Unlike the word 'may,' which implies discretion, the word 'shall' usually connotes a requirement." *Kingdomware Tech., Inc. v. U.S.*, 136 S.Ct. 1969, 1977 (2016). The Board has no discretion to delay when it recognizes the Department's decision.

The Board also has no discretion in when to implement the Department's decision. The statute clearly states, "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 (emphasis added). In this case, the Board recommended that OSF not be exempt and assessed OSF accordingly. But once the Department rejected that recommendation and found OSF to be exempt, the Board's non-exempt assessment was no longer statutorily authorized. Instead, it became an "unauthorized assessment." *Id.*

*See also Millennium Park*, 241 Ill.2d at 295 (public officials' ability to assess and tax is limited by what is "expressly spelled out by statute"). Section 16-70 plainly provides that "[t]he Department shall determine whether the property is legally liable to taxation." The Department, not the Board, makes the decision. If the Board could delay recognition or implementation of the Department's decision it would elevate the Board's non-binding recommendation over the Department's decision. That position is inconsistent with the hierarchy of authority clearly expressed in § 16-70. While the Board may be correct that the Department's decision is not *final* for purposes of administrative review, the Department's current exemption decision is still more *authoritative* than the Board's recommendation.

The Board may ultimately prevail in the administrative protest that is currently pending before the Department. In the interim, however, the clear language of § 16-70 dictates that the Board must recognize the Department's decision and must adjust the assessment books to reflect that decision. The Treasurer, in turn, must issue new tax bills in light of the Department's exemption decision. However, if during the administrative review the Department changes its decision and concludes that OSF is not exempt, the Board must again correct the assessment books to reflect that decision and the Treasurer must tax OSF. Indeed, OSF confessed at the hearing on September 26 that, if the Department or Director ultimately concludes that OSF is not exempt, then the Treasurer

would have authority to tax OSF.<sup>8</sup> But until the Department changes its decision, neither the Board nor the Treasurer have the statutory authority to disregard it. As a result, OSF is entitled to declaratory judgment.

V

For the reasons stated above, the Court issues the following orders:

- (1) OSF's motion for summary judgment (filed on July 29, 2019) is granted.
- (2) The Board and Treasurer's motion to dismiss (filed on August 23, 2019) is denied.
- (3) Judgment is entered in favor of OSF on the amended complaint (filed July 16, 2019).
- (4) Within 14 days of the date of this order, the Board "shall correct the assessment" in the assessment books to reflect the Department's decision of April 5, 2019.
- (5) Within 14 days of the Board's correction, the Treasurer shall issue corrected tax bills to OSF reflecting the Department's decision.

October 1, 2019

Date

/s/ Jason M. Bohm

Circuit Judge

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<sup>8</sup> At the hearing, OSF agreed that the Treasurer would have authority under 35 ILCS 200/9-265 to issue the updated tax. OSF further waived any argument that the Treasurer's authority is limited to three years as discussed in § 9-265. In other words, if in the future, the Department rules that OSF was not entitled to the exemption, then the Treasurer can tax OSF accordingly.