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STATE TAXATION

The thing generally raised on city land is taxes.—CHARLES DUDLEY WARNER, My Summer in a Garden.

DEVELOPMENTS IN REAL ESTATE TAXATION— 1950–1960

FRANCIS M. CORBY

THE COMPLEXITY OF Illinois legislation in connection with taxation has been in keeping with the general picture of population explosion. Each session of the legislature has seen more bills introduced and more passed. The Revenue Act of the ILLINOIS REVISED STATUTES, chapter 120, a few years ago was bound in one volume; now it is *squeezed* into two. This article will dwell on some significant changes and attempt to theorize as to the trend of real estate taxation.

The Seventy-first General Assembly amended section 216 of the Revenue Act so that general real estate taxes now become a lien against the real estate on January 1 of each year, instead of April 1, as in the case of personal property. Another important amendment is one concerning section 524 of the Revenue Act. This 1959 amendment created four assessment districts in Cook County, which enable the assessor to once a year make a complete and fair assessment of the property in one quarter of the districts in the County, instead of attempting to reassess the entire County every four years. The problem here formerly, of course, was that every four years the assessor had to hire additional help on a temporary basis. The inequities of it are apparent: Because of the temporary status of the jobs, the assessor's office was limited as to the caliber of employee it was able to hire. The Illinois Supreme Court, in October of 1960, decided that this amendment was constitutional and valid.¹

In general, the theme behind the real estate tax structure has not changed; that is, the burden is on the taxpayer to show the illegality

¹ Apex Motor Fuel Co. v. Barrett, 20 Ill.2d 395, 169 N.E.2d 769 (1960).

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of the tax. This, of course, differs from other branches of law—for instance criminal law, where one is presumed innocent until proven guilty beyond a reasonable doubt.

TAX FORFEITURE FORECLOSURES

One important phase of real estate taxation in Cook County has been the tax forfeiture foreclosure program. This has been on the statute books for over half a century,² but was brought into more active play in Cook County as a result of the depression years, when over 300,000 parcels of real estate became delinquent commencing with the year 1930 or 1931. Under the administration of the Delinquent Tax Committee of the Board of County Commissioners of Cook County, and in cooperation with the State's Attorney's office, a program was initiated which resulted in a partial payment on the principal tax due and forgiveness of the penalties, for the purpose of restoring property to the current tax rolls. In the past ten years, there have been 10,006 tax forfeiture foreclosure cases filed with the Board of County Commissioners, which have resulted in 159,251 parcels of real estate being restored to the current tax rolls. The total of these bids, as submitted, equalled \$25,810,573.31, and payment of the current taxes with penalties amounted to \$34,081,036.43.³

Legislation has been enacted in reference to the abovementioned restoration procedure and, as a result, it has had its temporary setbacks. Section 216 of the Revenue Act originally spelled out the interest that an owner would have to pay the bidder on redemption from a tax foreclosure sale. This was one per cent a month for the first six months, and six per cent a year thereafter, thus making a total of fifteen per cent if the owner redeemed in the twenty-fourth month. In 1953, this section was amended to read that interest paid on redemption was to be twelve per cent of the sales price for each six-month period, which would make a total of forty-eight per cent if redeemed within the twenty-fourth month period. As a result of this, with the opportunity of bidding at these tax foreclosure sales, a buyer could make twelve per cent on his money and perhaps not have it invested for more than thirty days. That is, if the owner wished to redeem the day after the sale, he would still pay twelve per cent of the sales price to

² Ill. Laws 1881, at 130.

³ DELINQUENT TAX COMMITTEE OF THE BOARD OF COUNTY COMMISSIONERS OF COOK COUNTY.

the bidder. This defeated the purpose of the tax foreclosure program, and the operation of the machinery as a method for freeing hopelessly burdened real estate and putting it back on the permanent-paying basis, was grossly impaired. In a suit tried before the Circuit Court of Cook County, it was held that this 1953 amendment was unconstitutional; but on appeal, the Supreme Court reversed the Circuit Court and decided that the amendment was constitutional.⁴ This case was decided in January 1955, and upon receipt of this decision, a moratorium was declared, and no tax foreclosures were processed. Then on May 21, 1955, as an emergency measure, section 216 was amended. This amendment reduced the amount required to redeem from sales in tax foreclosure suits during the first two months following the date of sale to one per cent a month, and then twelve per cent for the balance of the first six months, and twelve per cent for each six-month period thereafter.

Another amendment effective July 13, 1955, added to the Revenue Act a new section, 216D (697D), authorizing the county to purchase at tax foreclosure sales. This enabled the county board, in its discretion, to bid in the name of the county as trustee for all taxing districts having an interest in the taxes or special assessments for the non-payment of which the land is sold. The county was allowed to bid its lien of the unpaid taxes and did not need to make a cash bid. Section 216D was later amended effective July 5, 1957; this amendment enlarged the scope of the statute to permit the county boards to bid at tax sales under "any" provisions of the Revenue Act. The constitutionality of these two amendments was upheld in 1960 in *People v. Wrage*,⁵ where the county purchased with a non-cash bid for the full amount of general taxes and special assessments, although there were cash bids by individuals for less than the full amount. In overruling the objection that the county purchased the lands in order to sell them at a nominal price for use as a golf course, the court stated that a possible future sale was not in issue and the objection was speculative and immature.

An interesting point of law was resolved in the case of *People v. Eisenberg*,⁶ decided in March 1960. Here, a tax foreclosure suit was filed and a sale held covering delinquent taxes up to and including the year 1946. The decree of sale provided that the subsequent taxes for

⁴ *People v. Lewis*, 5 Ill.2d 117, 125 N.E.2d 87 (1955).

⁵ 20 Ill.2d 55, 169 N.E.2d 225 (1960).

⁶ 19 Ill.2d 360, 166 N.E.2d 71 (1960).

the years 1947 to date should be paid in full with penalties. The purchaser at the tax foreclosure sale on October 22, 1957, failed to pay these taxes. On March 20, 1958, six months later, the county collector sold the 1956 real estate tax at the annual sale, and the purchaser at this sale subsequently paid the delinquent taxes for the years 1947 to 1955. The bidder at the tax foreclosure sale, on petition to the trial court, had his contention upheld that the Circuit Court had sole jurisdiction of the 1947 to 1956 taxes, and that they could not be sold at the annual tax sale by the county collector, and an order was entered setting aside the latter sale. The Supreme Court reversed this decision and held that the foreclosure sale and the annual tax sale are concurrent remedies, and that there is no authority for preventing the county collector's annual tax sale where the delinquent taxes remain unpaid. In other words, the purchaser at the foreclosure sale did not abide by the terms of the decree, did not pay his subsequent taxes within a reasonable length of time, and by his own laches opened the door for a subsequent tax purchase. This case strenghtens the tax foreclosure program in that it makes it imperative on the purchaser at a tax foreclosure sale to pay his subsequent taxes promptly, as he has agreed to do, in order to protect his tax foreclosure purchase.

The question as to whether the holder of a mortgage is entitled to notice of petition for tax foreclosure and issuance of deed was recently decided in 1960. Neither section 263 of the Revenue Act, which requires notice at least three months prior to the issuance of a tax deed, nor section 266, which requires notices not more than five months prior to the expiration of the redemption period, make it necessary for notice to be personally served on a note holder under a trust deed. The requirements of these sections are satisfied as to such note holder when notice is published in a county newspaper on three occasions within the specified time.⁷ Of course, the theory that must be behind such a decision is that the courts are attempting to put some teeth into the tax collection system for the tax purchaser who has observed the statutory requirements for going to a deed. In this way, it encourages tax buyers and enables them to receive merchantable title from the county court upon fulfillment of the conditions precedent. Such a procedure is necessary to keep the tax revenues at the highest possible level.

In reviewing legislation enacted by the Seventieth General Assembly, 1957, the courts upheld tax assessments in all four cases which

⁷ Reimer v. Interstate Bond Co., No. 35688, Sup. Ct., Ill., March 29, 1961.

were appealed. This is in keeping with the theory that unless it clearly appears the tax is illegal, a court is inclined to rule in favor of the taxing authorities. These four cases did not involve any new rules of law.

Where the county court, after personal service of notice in proceedings for a deed pursuant to the annual tax sale, enters an order under section 266 of the Revenue Act directing the county clerk to issue such deed, such order cannot be collaterally attacked. Thus, if personal service can be had on the title holders or their tenants (service on the title holder's tenants is equivalent to personal service as per statute), the tax buyer can make good title if no appeal is taken from the county court order directing the issuance of a deed.⁸ No service by publication or affidavit is needed.

Holders of an equitable interest in land can redeem from a tax foreclosure sale. In one instance, a party who owned one hundred per cent of the shares of a bankrupt corporation which formerly held title, was entitled to redeem.⁹ In another case, where a person entered an old people's home, paid over a sum certain of money, and signed a contract assigning any and all properties she might have or become entitled to, to the old people's home, the assignee or grantee from that home was held to have an equitable interest and to be entitled to redeem from a tax foreclosure sale.¹⁰

No redemption from a tax foreclosure sale can be made after the entry of an order, pursuant to supplementary proceedings in a tax foreclosure suit, directing the issuance of a deed. This was held in *People v. Altman*,¹¹ in that case the Superior Court had entered an order directing the issuance of a deed, but the petitioner failed to present the order to the county clerk for a few days. In the meantime, the owner redeemed, but the court ordered this redemption set aside, saying that it was not a question of a race to the clerk's office once the rights of the parties had been judicially determined. Jurisdiction acquired in the main foreclosure action is retained for the purpose of entering a supplemental decree directing the issuance of a deed after the expiration of the redemption period, and such supplemental decree cannot be collaterally attacked.¹²

⁸ *Cherin v. R. & C. Co.*, 11 Ill.2d 447, 143 N.E.2d 235 (1957).

⁹ *People v. Hess*, 7 Ill.2d 192, 130 N.E.2d 280 (1955).

¹⁰ *Franzen v. Donichy*, 9 Ill.2d 382, 137 N.E.2d 825 (1956).

¹¹ 9 Ill.2d 277, 137 N.E.2d 357 (1956).

¹² *People v. Nat'l Builders Bank*, 10 Ill.2d 121, 139 N.E.2d 262 (1956).

The Legislature, with the thought that they had made the amended section 266 too broad, passed some amendments in connection with the right of the owner to compel a reconveyance after issuance of a tax deed where the property was improved. Section 255 (a) allows the owner of a home in this situation to put up 110 per cent of the cost to redeem, plus the recording charges and writ of assistance costs. The grantee of a tax deed or anyone claiming under said grantee is then required to reconvey. The writ of assistance cannot be served on an owner unless there is stated on the face of the writ the name and address of the tax deed grantee, or the party claiming under him, and the amount required to be tendered in order to secure reconveyance. Also, the writ of assistance is not to be executed until the expiration of thirty days from the date it is served. The tender provided for shall be made at any time after the issuance of the tax deed and prior to the expiration of thirty days from the date of service of the writ of assistance. In lieu of making a tender, the owner may, prior to the expiration of the thirty-day period, deposit the amount with the county treasurer and mail a written notice of such deposit to the grantee of the tax deed, or person claiming thereunder. If the writ of assistance has been served, the notice may be mailed to the address stated in the writ of assistance. This written notice of the tender or deposit is to be delivered to the sheriff, who shall thereupon not execute the writ of assistance.

Section 255 of the Revenue Act of 1939¹³ is now limited by the 1959 amendment to tax deeds issued pursuant to a sale held on or prior to September 1, 1951. Section 257¹⁴ now provides that if the grantee in a tax deed, or anyone claiming thereunder, shall fail or refuse to reconvey the premises to the owner or owners on demand after payment or tender or deposit of the amount due as provided in sections 255 and 255 (a), the owner or owners may file a petition in the county court in the tax sale proceeding praying that the amount of the tender, if not already deposited, may be deposited with the county treasurer, and that the sheriff or a master in chancery be ordered to reconvey the premises in the name of the holder of the tax title to the owner or owners thereof. Such notice of the filing of the petition and the date of the hearing thereon is to be given as the court may direct. Section 257 further provides that the court, upon proof that the required amount

¹³ Ill. Laws 1939, at 980, as amended, ILL. REV. STAT. ch. 120, § 736 (1959).

¹⁴ ILL. REV. STAT. ch. 120, § 738 (1959).

has been deposited with the county treasurer and that the petitioner has complied with all requirements of law entitling him to a reconveyance of the tax title, shall enter an order directing the sheriff or the master in chancery to reconvey the premises in the name of the holder of such tax title to the owner or owners thereof.

THE TAX-EXEMPT PROPERTY CASES

The great number of the cases taken to the Supreme Court for final adjudication during the ten-year period being examined in this article have to do with chapter 500—Property Exempt from Taxation. The question raised in the chapter 500 cases involves judicial interpretation of the factual background. Again the crux of the court's holdings is that property is taxable unless specifically exempted, and in the cases mentioned below the taxpayers attempted to overcome this burden with varied success.

In a 1956 case involving a German school where instruction in swimming and gymnastics constituted the course of "study," the court held that swimming and gymnastic instructions are not sufficient in themselves to bring this institution within the scope of the school exemption statute, which covers institutions in which physical education is a part, but only a part of the regular school curriculum.¹⁵

Along these same lines, in a case involving property of an American Legion post, the court held that such property is not permitted the exemption from property taxes granted charitable organizations.¹⁶ The court laid down the rule that a group must meet two requirements to be considered for this property tax exemption allowed charitable organizations:

1. The organization owning the property must be a charitable organization.
2. There must be exclusive use of such property for charitable purposes.

Here the court ruled that neither element existed. The court further stated that while the opinions of the Illinois Attorney General and the Cook County State's Attorney that Legion property and that of other veterans' organizations were exempt from taxation were "persuasive," they were not binding upon the court, as neither were the actions of previous assessing bodies as regards future tax years.

¹⁵ *People ex rel. Brenza v. Turnverein Lincoln*, 8 Ill.2d 198, 132 N.E.2d 499 (1956).

¹⁶ *Rogers Park Post No. 108, Am. Legion v. Brenza*, 8 Ill.2d 286, 134 N.E.2d 292 (1956).

Statutory exemption of property used for "philosophical purposes" is unconstitutional, because such an exemption is not authorized by article IX, section 3 of the Illinois Constitution. Thus, property of a college, used as a museum and surgeons' "hall of fame," and also used for meetings and distribution of literature, does not constitute a dedication to charitable purposes entitling the property to a tax-exempt status.¹⁷

In order to qualify as a "school" for tax exempt purposes, a private institution must order a course of study which fits into the general scheme of education founded by the state and supported by public taxation, and which substantially lessens what would otherwise be a governmental function or obligation.¹⁸

A former ruling exempting property from taxes for certain years is not binding for subsequent years, the ruling being that the course of action for taxes for one year is not the same as, or identical with a course of action for taxes for subsequent years.¹⁹ An action was brought by the Chicago Historical Society to restrain the county from collecting taxes on its property for the years 1947 to 1954, based on the premise that the property was exempt from taxes in 1945 and, in view of the fact that the society still owned it, that the exemption should still apply.²⁰ The lower court held that the property was within the exempt classification and enjoined the taxing bodies from attempting to collect the taxes. But the Supreme Court rejected the position that property is exempt as long as ownership is unchanged. The taxpayer failed to show that the issues sought to be raised had been presented and determined in the earlier case concerning the 1945 taxes. That is, the court held that each case in each year would be determined on the issues raised in that particular case, and the use and ownership for that particular year.

In a case involving real estate taxes for the year 1949, a corporation had rented real estate from the Chicago Board of Education. This real estate, of course, was exempt from real estate taxation. In the lease, it was set forth that the corporation was to make some improvements for commercial purposes. The question was as to whether the improvements themselves are subject to assessment for property tax purposes.

¹⁷ *International College of Surgeons v. Brenza*, 8 Ill.2d 141, 133 N.E.2d 269 (1956).

¹⁸ *Coyne Elec. School v. Paschen*, 12 Ill.2d 387, 146 N.E.2d 73 (1958).

¹⁹ *Oak Park Club v. Brenza*, 7 Ill.2d 389, 131 N.E.2d 89 (1955).

²⁰ *Chicago Historical Soc'y v. Paschen*, 9 Ill.2d 378, 137 N.E.2d 832 (1956).

The corporation contended that the property was exempt because it belonged to the Board of Education at all times. The court held this was not valid, since ownership, in itself, is not the sole test. To be exempt, the property must be *used* for exempt purposes. The improvements on the land involved were for the benefit of the lessees, and there was no attempt to assess the land but only the leasehold therein and the improvements thereon.²¹

An interesting case was decided in July of 1957. The question involved had to do with the tax warrant books which reflect the payment of the taxes. The fact that the warrant books showed the items paid, it was held, would only protect a bona fide purchaser who acquired the real estate and relied on the record having been marked paid.²² In this instance, the court held there was *no* bona fide purchaser, *no* third party involved, that the Foreman Realty Corporation and the Foreman Banking Company were *one and the same* taxpayer, and that where properties are owned by the same taxpayer, the prima-facie evidence of the tax warrant books being marked paid can be contested. This protects a third party who is an innocent purchaser for value, yet affords no loophole for an owner when he knows that he has not paid the taxes.

A somewhat different set of facts (and this is why the litigants were willing to take it up to the Supreme Court), was involved in a case concerning property of another not-for-profit corporation. Property, no matter its ownership, is held to be taxable where it is not primarily used for charitable activities.²³ In the case in question, the not-for-profit corporation used the property as a headquarters whereby it furnished advice or inspiration to those actively engaged in a charitable endeavor; the court held that this did not, alone, render the corporate activity charitable. However, even if the organization itself had been deemed charitable, the claim of exemption would have failed, because the burden of proof is upon the taxpayer to demonstrate that its property is used exclusively for charitable purposes, and here the corporation did not prove this point—possibly because it could not.

The case of *Locust Grove Cemetery Ass'n v. Rose*,²⁴ involved

²¹ *People ex rel. Paschen v. Hendrickson-Pontiac, Inc.*, 9 Ill.2d 250, 137 N.E.2d 381 (1956).

²² *Foreman Realty Corp. v. Brenza*, 11 Ill.2d 531, 144 N.E.2d 623 (1957).

²³ *Rotary Int'l v. Paschen*, 14 Ill.2d 480, 153 N.E.2d 4 (1958).

²⁴ 16 Ill.2d 132, 156 N.E.2d 577 (1959).

property held in trust for a cemetery association, the income from which could be used only for cemetery purposes. The court held the property to be exempt from taxation, and distinguished the case from exemption cases where it had been decided that the property did not fall within the terms of the statute granting exemption.²⁵ The county collector contended that the property was not exempt from taxation because it was not used for burial purposes; he also argued that if statutes in question exempted the land in question, they were unconstitutional. The court stated that the sole question was whether or not the Illinois State Constitution of 1870 permits the Legislature to exempt from taxation property owned by or held in trust for a cemetery, the income from which can be used only for the benefit and maintenance of the cemetery. They stated that the constitution (article IX, section 3) did not say "used for graveyards or grounds for burying the dead," but merely (the more broad interpretation), for "cemetery . . . purposes."

In *Milward v. Paschen*,²⁶ another case concerning a school—in this particular instance a funeral director management school—tax exemption was denied in the Supreme Court. In holding the property of this non-profit organization taxable, the court stated that the said property was not primarily used for charitable activities, and that the organization did not meet the burden of proving itself to be a charitable organization. The mere fact that the property in question was used exclusively for a school did not, in itself, render such property exempt. The court again stated that in order for any school to have a tax exempt status, the course of study offered must fit within the general scheme of education provided by the state in tax-supported institutions. Here the school did not relieve the state of its burden of education, and the claim for exemption therefore failed. Summarizing, the court held that the foundation was neither a school nor a charitable organization, and its property was not used solely for charitable or beneficent purposes. Yet, in a case where the property of a medical college was involved, the court drew a fine line of distinction in holding the college property exempt. It was stated that it is not necessary that property be used for classrooms in order to qualify for the exemption granted to land used for educational purposes. It is sufficient if the use to which the land is put is one which would be exempt if performed by an institution

²⁵ *People ex rel. Paschen v. Hendrickson-Pontiac, Inc.*, 9 Ill.2d 250, 137 N.E.2d 381 (1956); *International College of Surgeons v. Brenza*, 8 Ill.2d 141, 133 N.E.2d 269 (1956); *Rogers Park Post No. 108, Am. Legion v. Brenza*, 8 Ill.2d 286, 134 N.E.2d 292 (1956).

²⁶ 16 Ill.2d 302, 157 N.E.2d 1 (1959).

which conducts classroom work.²⁷ Here, the lower court had dismissed the complaint, but the taxpayer was upheld on appeal. There was a strong dissenting opinion citing *Milward v. Paschen*.²⁸

A recent decision concerned the Illinois College of Optometry, which owned three parcels of real estate improved with a student union building, a building where clinical studies were pursued, and a parking lot.²⁹ In this case, a three-year curriculum qualified the institution as a school engaged in systematic instructions in useful branches of knowledge, and the court held that the plaintiff's course of study fell within the scheme of education presented in at least one tax-supported school in this state. Some state-supported universities³⁰ maintain departments or schools of optometry, and the course of study required by the plaintiff is equally as comprehensive and exacting as courses presented and required by such institutions. The University of Illinois, the tax-supported school referred to by the court, has no department school, or college of optometry. However, courses taught by the plaintiff are taught in the university, and any medical doctor undertaking to specialize in ophthalmology must have in his course of study the courses offered by the plaintiff. Thus, to this extent, the plaintiff provides a course of instruction which duplicates that provided in the tax-supported university, and if this school were not maintained, it would substantially increase the tax burden in connection with supporting pre-medical and medical schools.

Very recently an opinion was handed down in another cemetery case; the cemetery owned property which was improved with a residence used by the caretaker of the cemetery and also improved with a radio and television station, the proceeds from which were used for cemetery purposes. The court held that this property was *not* entitled to a tax exemption because it was not being devoted to burial purposes.³¹ When one compares this case with *Locust Grove Cemetery Ass'n v. Rose*,³² it becomes easy to see why taxpayers would ask for a ruling from the Supreme Court when there is a slight variance in the factual situation. Any real difference between trust property owned

²⁷ *Ass'n of Am. Medical College v. Paschen*, 17 Ill.2d 125, 160 N.E.2d 763 (1959).

²⁸ 16 Ill.2d 302, 157 N.E.2d 1 (1959).

²⁹ *Illinois College of Optometry v. Lorenz*, 21 Ill.2d 219, 171 N.E.2d 620 (1961).

³⁰ Ohio, California, and Indiana.

³¹ *Spring Hill Cemetery v. Ryan*, 20 Ill.2d 608, 170 N.E.2d 619 (1960).

³² 16 Ill.2d 132, 156 N.E.2d 577 (1959).

by a cemetery, the earnings of which are devoted to cemetery purposes, and property owned by a cemetery improved with a caretaker's house and a radio and television station, the income from which is used by the cemetery for cemetery purposes, is hard to find. Perhaps the court felt that the granting to the caretaker of a place to live was the controlling factor.

It is interesting to note that in many of the above exemption cases, the taxpayer was exempt from income taxes imposed by the federal government, but yet the state held that they did not come under the state exemption statutes.

REVENUE LEGISLATION IN THE OFFING

The Seventy-first General Assembly failed to approve any proposed amendments to the constitution for submission to the voters on November 8, 1960. This was the first time since the adoption of the Gateway Amendment in 1950 that the legislature has not submitted amendments to the constitution. It would seem that the current, Seventy-second General Assembly, in view of Governor Otto Kerner's program and the pressing need for additional revenue, will probably submit some proposed amendments to be voted on in the off-year election in November, 1962. Along these lines, there have been many thoughts, suggestions, and plans developed, including that of a state income tax. As far back as 1932, a graduated state income tax was held unconstitutional.³³ The present trend includes proposals, among others, for a flat income tax based on percentage as reflected in the federal tax return, in lieu of personal property tax and sales tax on food and clothing. This is only mentioned because it is felt by some that enough monies could be collected by this method to help relieve the overwhelming tax burden now weighing down real estate.

The Committee on State and Municipal Taxation of the Chicago Bar Association has in the past joined forces with similar committees of the Illinois State Bar Association in submitting revisions and amendments to article IX of the constitution. The Committee realizes that some significant changes must occur in the next decade to meet additional revenue requirements.

³³ *Bachrach v. Nelson*, 349 Ill. 579, 182 N.E. 897 (1932).