

April 10, 2019

**Via U.S. Mail &
Certified Mail, Return Receipt Requested**

Illinois Department of Revenue
Office of Administrative Hearings (5-500)
Willard Ice Building
101 West Jefferson Street
Springfield, Illinois 62794

Re: Dept. Docket No. 18-022-00159

To Whom It May Concern:

Please be advised that this firm represents the Intervenor, Hinsdale Township High School District 86 ("District 86"). District 86 hereby protests the Department's February 26, 2019, preliminary decision granting Adventist Hinsdale Hospital's ("Adventist") application for a 2018 tax year property tax exemption for the parcels identified as PIN 06-36-406-005-0000; 06-36-405-024-0000; 09-01-208-003-0000; 06-36-406-016-0000; 09-01-207-013-0000; and 09-01-208-004-0000, and commonly known as 120 N. Oak Street Hinsdale, Illinois 60521 ("the Property"). District 86 also requests an administrative hearing pursuant to Section 8-35(b) of the Property Tax Code and 86 Ill. Adm. Code §§ 110.145(c) and 200.120(a).

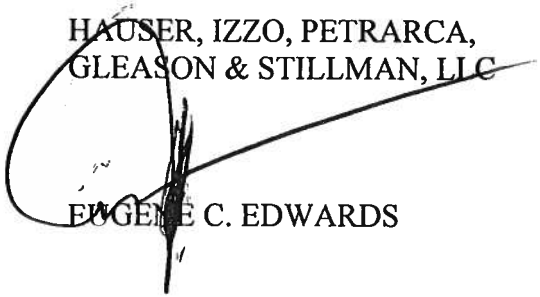
The bases for District 86's protest and hearing demand are: 1) the Department mistakenly determined that Adventist satisfied the constitutional guidelines for a charitable exemption articulated in *Methodists Old People's Home v. Korzen*, 39 Ill. 2d 149 (1968); 2) the Department mistakenly determined that Adventist made exclusively charitable use of the Property during the 2018 tax year; 3) the Department misapplied the *Korzen* guidelines to the criteria set forth in Section 15-86 of the Property Tax Code; and 4) the Department mistakenly granted Adventist's application even though the application did not satisfy the criteria set forth in Section 15-86(c) of the Property Tax Code.

In accordance with Department Rule of Practice 200.120(c), District 86 reserves the right to assert additional bases for its protest of the Department's preliminary decision should they become known to District 86 during the course of the hearing proceedings. Enclosed is a properly executed Department Form IL-2848 appointing this law firm District 86's representative. Finally, please direct all further correspondence to District 86 pertaining to this matter to me and John M. Izzo.

Thank you for your cooperation.

Very truly yours,

HAUSER, IZZO, PETRARCA,
GLEASON & STILLMAN, LLC



EUGENE C. EDWARDS

ECE

Enclosure

cc: John M. Izzo (Via Email)
Dr. Bruce Law, Superintendent (Via Email)
Mr. Josh Stephenson (Via Email)

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

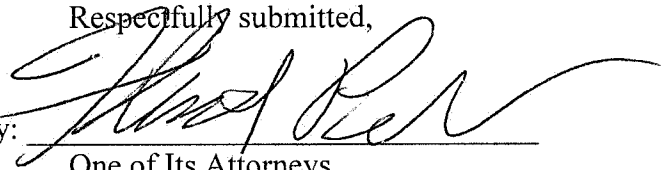
In re Property Tax)	Docket Nos: 19-PT-045
Exemption Application of)	18-022-00159
)	PINs: 06-36-405-024, 06-36-406-005,
)	06-36-406-016, 09-01-207-013,
ADVENTIST HINSDALE HOSPITAL)	09-01-208-003, 09-01-208-004

TO SERVICE LIST ATTACHED

NOTICE OF MOTION

TO: PLEASE TAKE NOTICE that on December 10, 2019 at 2:30PM the undersigned shall appear via teleconference before Administrative Law Judge John White , or any administrative law judge sitting in his stead, at the Illinois Department of Revenue, Office of Administrative Hearings, Chicago, Illinois, and shall then and there present **Applicant's Section 2-619(a)(9) Motion to Dismiss Protest**, a copy of which is submitted with this notice.

Applicant ADVENTIST HINSDALE HOSPITAL
Dated: November 30, 2019

Respectfully submitted,

By: _____
One of Its Attorneys

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Chicago, Illinois 60661

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

In re Property Tax)	Docket Nos: 19-PT-045
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ADVENTIST HINSDALE HOSPITAL)	09-01-208-003, 09-01-208-004

APPLICANT’S SECTION 2–619(A)(9) MOTION TO DISMISS PROTEST

Applicant ADVENTIST HINSDALE HOSPITAL (“HOSPITAL”) respectfully moves and asks the State of Illinois Department of Revenue Office of Administrative Hearings (“IDOR Adm. Hearings”) and assigned administrative law judge John White to dismiss the subject letter protest of HINSDALE TOWNSHIP HIGH SCHOOL DISTRICT 86 (DISTRICT 86) to THE DEPARTMENT OF REVENUE OF THE STATE OF ILLINOIS’ grant of non-homestead property tax exemption to the HOSPITAL for the several parcel’s at the address commonly known as 120 N. Oak Street, Hinsdale, Illinois (“DISTRICT PROTEST”) in its entirety and with prejudice pursuant to SECTION 2–619(A)(9) of the Code of Civil Procedure. And states:

FACTS

1) ADVENTIST HINSDALE HOSPITAL (“HOSPITAL”) is a charitable not-for-profit 501(c)(3) organization. It built one of its hospital buildings on certain real estate in DuPage County, Illinois exemption from real estate tax on that real estate is the subject of the matter herein. That real estate of HOSPITAL at issue is commonly known as 120 N. Oak Street, Hinsdale, Illinois and it is further identified as real estate in DuPage County, Illinois assigned Property Index Numbers 06-36-405-024, 06-36-406-005, 06-36-406-016, 09-01-207-013, 09-01-208-003, and

09-01-208-004. It is the real estate referred to and granted non-homestead exemption under 35 ILCS 200/15-86 in a Illinois Department of Revenue determination certificate to HOSPITAL dated February 26, 2019 (hereinafter the subject real estate). That Certificate is attached hereto as Exhibit A and incorporated herein by reference. The HOSPITAL has used the subject real estate as charitable hospital service property at all times relevant.

2) The HOSPITAL filed its exemption application in 2018 and the Department of Revenue issued its determination granting exemption for the subject real estate on February 26, 2019. The Revenue Code at 35 ILCS 200/8/35 allows up to 60 days for an aggrieved party to file a protest of an exemption determination. Neither the HOSPITAL nor its counsel was timely served within 60 days with a protest letter opposing the February 26, 2019 grant determination of exemption by the Department for the HOSPITAL's subject real estate.

3) Hinsdale Township High School District 86 (District 86) claims it timely filed a protest letter. Its letter however was first produced to HOSPITAL's counsel in October 2019 more than 200 days after the Departments February 26, 2019 determination of exemption. The District 86 letter shows it was not served on the HOSPITAL or its counsel. HOSPITAL's counsel's address was on the Department's February 26, 2019 determination of exemption. See Exhibit A.

4) No notice of a protest by District 86 or of any Department proceedings or hearings on a protest of the February 26, 2019 Certificate determination was provided to HOSPITAL or its counsel until mid-October 2019, when a copy of District 86 's letter was shared and HOSPITAL counsel was advised a hearing was scheduled before the Department's ALJ John White.

5) Due process requires timely notice and service of a protest (complaint) to commence a process to oppose an applicant for exemption's granted exemption. It is not in keeping with elemental principals of due process, civil procedure, and administrative procedure law that a

complaining party, an intervener, filing a complaint/protest can commence a matter and have it proceed without service upon the applicant. Indeed, the determination stated the address for applicant on its face. The District 86 filed in the Board of Review and knew the applicant counsel name and address.

6) The Administrative Code by regulation directs that “Such application for hearing shall be in writing and shall be **filed with the Department** within 20 days after said decision has been rendered **and notice thereof mailed**”. 86 Ill Admin Code Section 110.145(c). Emphasis added. The rules require both filed with the Department and noticed to the parties, here the protest was not properly presented by District 86, it was not served or noticed on the HOSPITAL, and its protest should be dismissed as insufficient for failure of timely notice and service upon the applicant here.

7) Further the District 86 protest letter has not been filed in the administrative record on a timely basis. At a hearing in early November 2019 HOSPITAL counsel raised the issue asking how could a matter be pending with no service on the HOSPITAL, and counsel further inquired if there was a timely file stamped copy of the District 86 protest letter. It appears something was mailed to Revenue but the District 86 protest letter does not appear to have been filed stamped into the administrative record. The district 86 has no filed stamped copy and no filed stamped copy appears in the record. The District 86 letter is addressed to an address different from that stated in the Department’s determination letter for protests to be sent to, and was not filed.

8) The Revenue Code at 35 ILCS 200/8-35(b) provides that an aggrieved party may “file an application for hearing” within 60 days. The Administrative Code by regulation directs that “Pleadings, papers, memoranda, motions, and other matters not otherwise received into evidence during a hearing shall be filed with the Clerk and be stamped as having been duly registered. No

document not otherwise having been admitted into evidence during a hearing shall become part of the administrative record without the stamp of the Clerk affixed thereto as proof of filing.” 86 Ill Admin Code Section 200.200. There has been no showing, though requested, of a timely filed stamped copy of the District 86 protest letter.

9) The Administrative Code further states “No document of any nature shall be considered to be part of the administrative record unless it has been marked and offered or received in evidence during the course of the hearing or has otherwise been filed with the Administrative Clerk and bears an appropriate stamp as a certificate of such filing. Any document not comporting with this requirement shall not be considered nor have any legal effect before this agency.” 86 Ill Admin Code Section 200.195.

LEGAL STANDARDS

A claim is properly dismissed under Section 2–619 of the Code when “it is barred by affirmative matter avoiding the legal effect or defeating the claim.” 735 ILCS 5/2–619(a)(9). “[A]ffirmative matter” is something in the nature of a defense that negates the cause of action completely or refutes crucial conclusions of law or conclusions of material fact contained in or inferred from the complaint. *Ill. Graphics Co. v. Nickum*, 159 Ill. 2d 469, 486 (1994). While all well-pleaded facts must be taken as true in reviewing a Section 2–619 motion, the motion should be granted if, after construing the supporting documents in the light most favorable to the nonmoving party, there are no disputed issues of fact, and the “affirmative matter” negates the plaintiff’s claims or refutes conclusions of material unsupported fact. *Waterford Exec. Group, Ltd. v. Clark/Bardes, Inc.*, 261 Ill. App. 3d 338, 343 (2d Dist. 1994).

ARGUMENT

The District 86 protest here should be dismissed with prejudice under Section 2-619(a)(9) of the Code because it was not timely filed or served contrary to code and rules.

There has been no showing, though requested, of a timely filed stamped record copy of the District 86 letter. The regulations make clear “No hearing ...may be initiated without the filing of a timely protest requesting such hearing” 86 Ill Admin Code Section 200.120. The Rules and the Code both mandate a timely filing of the protest, and there has been no timely filed or served protest. The District 86 letter protest should be dismissed with prejudice under Section 2-619(a)(9) of the Code as the facts show that the District 86 protest letter was not timely filed stamped by the Clerk and was never timely noticed or served on the HOSPITAL as required by Code and Regulation. The protest letter is not properly considered to be in the Record.

FOR THESE REASONS, Applicant HOSPITAL, respectfully requests the entry of an order (i) dismissing District 86 's Protest and (ii) granting any other relief the Court deems just.

Dated: November 30, 2019

Applicant ADVENTIST HINSDALE HOSPITAL

Respectfully submitted,

By: _____

One of Its Attorneys

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Non-Homestead Property Tax Exemption Certificate



FLOYD D PERKINS; NIXON PEABODY
70 W MADISON ST STE 3500
CHICAGO, IL 60602-4224

February 26, 2019



Letter ID: L1551366576

Decision Date: February 26, 2019
County: DuPage
Docket no.: 18-022-00159
Co Reference No:

Property Owner or applicant: ADVENTIST HINSDALE HOSPITAL A/K/A ADVENTIST MIDWEST HEALTH

Valid from 1/1/2018 to 12/31/2018

We have determined that the organization, identified above, has met the exemption qualifications necessary to receive a non-homestead property tax exemption under 35 ILCS 200/15-86.

Property index number, legal description, or both:

06-36-405-024; 06-36-406-005; 06-36-406-016; 09-01-207-013
09-01-208-003; 09-01-208-004

You will need to file an annual affidavit using Form PTAX-300-HA with the CCAO on or before January 31 of each year

If you do not agree, you must file a protest with us, the Illinois Department of Revenue, and request an administrative hearing within 60 days of this notice. Your request must be in writing, must clearly indicate that you want to protest, and state concisely the mistakes alleged to have been made or the new evidence to be presented (35 ILCS 200/8-35(b)). Include the Revenue docket number, listed above, on all correspondence regarding this property. Mail or fax your request to the address or number listed below.

If you have questions, contact our Exemption Section weekdays between 8:30 a.m. and 4:30 p.m. Our address and telephone number are below.

David Harris, Director
ILLINOIS DEPARTMENT OF REVENUE

EXEMPTION SECTION MC 3-520
ILLINOIS DEPARTMENT OF REVENUE
101 WEST JEFFERSON STREET
SPRINGFIELD IL 62702

217 785-2252
217 524-1966 fax

cc: Clerk of Board of Review, County Clerk, Intervenor

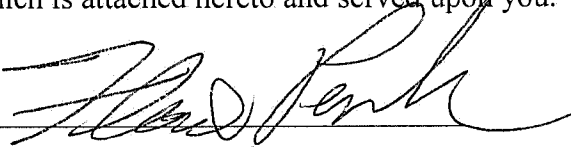
EXHIBIT 'A'

NOTICE OF FILING AND CERTIFICATE OF SERVICE

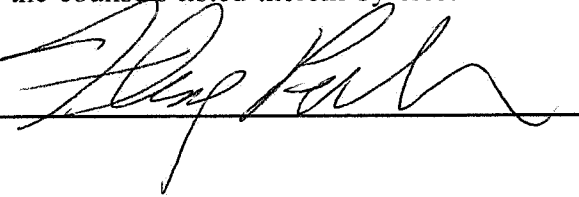
Please take notice that this 30th day of November 2019 I, the undersigned an attorney, filed with the Clerk of the Administrative Clerk for the Administrative Hearings for the Illinois Department of Revenue the accompanying

(1) Applicant's Section 2-619(a)(9) Motion to Dismiss Protest and (2) Notice of Motion

in the foregoing captioned matter a copy of which is attached hereto and served upon you.



I, Floyd Perkins an attorney, certify that on November 30, 2019 , I caused true and correct copies of the accompanying **(1) Applicant's Section 2-619(a)(9) Motion to Dismiss Protest and (2) Notice of Motion** to be served on each of the persons listed on the service list attached at the email stated, by causing the same to be delivered to the counsels listed therein by electronic mail this 30th day of November 2019.



SERVICE LIST :

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

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ORDER

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This cause coming on to be heard for status conference and hearing on Taxpayer's Motion to Dismiss (Motion), the parties appearing through counsel, the Department having jurisdiction over the parties and the subject matter, and the administrative law judge (ALJ) being advised that:

1. The parties previously agreed to take receipt of orders to counsel at the respective email addresses listed on this order.
2. Taxpayer filed its reply, and both parties offered additional argument at hearing.
3. Documents submitted with Intervenor's Response show that it timely complied with the procedures set by PTC § 8-35(b), by requesting a hearing to protest the Department's initial determination to grant Taxpayer a property tax exemption for the property captioned in this order.
4. By its plain terms, PTC § 8-35(b) requires a "person feeling aggrieved" by the Department's initial determination to notify the Department of its request for a hearing to protest that determination. In this case, Intervenor timely did so. Since PTC § 8-35(b) does not expressly require a person feeling aggrieved to provide all parties to a proceeding with a copy of the person's protest, Intervenor's failure to simultaneously notify Taxpayer of its protest does not mean that Intervenor failed to comply with PTC § 8-35(b).
5. That Intervenor's protest was not mailed to the address listed on the Department's exemption certificate does not mean that Intervenor did not timely comply with PTC § 8-35(b).
6. Taxpayer's citation to Department hearing regulations, and the absence of a mark showing that Intervenor's protest was filed with the Office of Administrative

Hearing's Administrative Clerk within 60 days of the Department's initial determination, does not establish that Intervenor did not comply with PTC § 8-35(b).

7. Regulation § 200.195, on its face, describes the materials which are to be included in the Department's answer, should a complaint be filed to appeal the Department's final administrative decision after a contested case hearing has been held. 86 Ill. Admin. Code § 200.190(a).
8. Intervenor's protest was timely mailed to the Department prior to the date the matter was docketed as a contested case in the Department's Office of Administrative Hearings. *See* 86 Ill. Admin. Code § 200.200(a) ("The Office of the Administrative Clerk is hereby established for the purpose of receiving, registering and maintaining all documents which are or may become part of the administrative record of proceedings before the Department. Pleadings, papers, memoranda, motions and other matters not otherwise received into evidence during a hearing shall be filed with the Clerk and be stamped as having been duly registered."), (b) ("With the exception of the initial protest, requests for rehearing and matters admitted into evidence during a hearing or pre-trial proceeding, all papers, pleadings, motions and other documents filed with the Department by a party in reference to any pending action shall bear the name of the proceeding as designated by the Department and the docket number assigned. ...").
9. After a timely protest, the Department has the statutory duty to notify all parties to the proceeding of that protest. 35 ILCS 200/8-35(b); 86 Ill. Admin. Code § 110.145(c), (h); 86 Ill. Admin. Code § 200.120(a). Here, the Department's delay in notifying Taxpayer of Intervenor's timely protest and request for hearing cannot inure to Intervenor's detriment, and the involuntary dismissal of its timely protest.
10. The parties agreed to the date and time for the next event, as set forth below.

WHEREFORE, IT IS HEREBY ORDERED THAT:

11. Taxpayer's Motion is denied. Discovery may proceed.
12. This matter is set for status on March 11, 2020, at 2:30 p.m.



Date: January 9, 2020

Enter: _____
John White, Administrative Law Judge

Paula M. Hunter
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