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TEXAS SENATE DISTRICT 2

RQ-0897-GA

07/01/2010

RECEIVED
JUL 01 2010
OPINION COMMITTEE

The Honorable Greg Abbott
Attorney General of Texas
Attn: Opinion Committee
P.O. Box 12548
Austin, Texas 78711-2548

FILE # ML-46499-10
I.D. # 46499

Re: Requests for Opinions

Dear General Abbott,

The undersigned respectfully requests your opinion on several questions related to an ad valorem tax exemption issue in Hunt County. By way of explanation, my staff has worked with the City, the Hunt County Appraisal District, and L-3, and different parties have supplied various subparts of this request. Accordingly, there are some minor differences in terminology and presentation style in different parts of this request. Finally, questions 1 and 4 may be somewhat duplicative.

The City of Greenville ("City") holds legal title to the land and improvements located at the Greenville Municipal Airport, and which is comprised of two tracts: (i) the "Base Facilities" which includes improvements such as runways, a control tower, and a passenger terminal which are collectively used as a municipal airport; and (ii) the "Maintenance Facilities" which are devoted to the L-3 aircraft modification, maintenance and services of U.S. and foreign military aircraft (the Base Facilities and the Maintenance Facilities are referred to collectively as the "Majors Field Facility"). The Base Facilities are not in question in this Opinion Request.

L-3 Communications Integrated Systems, L.P. ("L-3") leases the Maintenance Premises which includes approximately 315 acres of land and improvements totaling approximately 3,000,000 square feet of building space. L-3 has possession and control of the Maintenance Premises and it is not open to the public. A copy of the lease agreement and five lease amendments between the City and L-3 are attached as Exhibit "A".

L-3 is a for profit business and its operations on the Maintenance Premises are devoted exclusively to aircraft modification, finish-out and servicing for U.S. and foreign government military and other government agency aircraft. For example, in 2009 L-3 received 95.98% of its gross revenues from the Majors Field Facility from the federal government and 4.02% from

foreign governments. The U.S. government plays an important role in all contracts with foreign governments, and its level of activity may vary among various contracts. L-3 work on these U.S. and foreign government aircraft includes a single-source design, production, and integration of airborne special-missions systems, including design, fabrication, installation, and testing of aircraft system components, structural modification, and comprehensive aircraft overhaul. The Hunt County Appraisal District ("HCAD") has compiled background materials on L-3's operations at the Major Field Facility which are attached as Exhibit "B" and "C."

Questions Presented:

1. In light of Texas Tax Code Section 11.11, are the Maintenance Premises exempt from property taxation a "public property used for public purposes"?

   Your office has previously asserted that, "as a matter of law...[a] city's airport and airport facilities, including those leased to a private individual, are impressed with a public purpose sufficient to meet Texas constitutional and statutory tests regarding ad valorem taxes." JM-464 (1986) However, a later opinion acknowledged that there are exceptions to the general rule. "If this representation is correct [that the air craft being stored and serviced at the hangar would be brought to the airport primarily for the purpose of maintenance and storage rather than to engage in the transport of passengers and cargo], the facility would not be used exclusively in support of the city's operation of the airport, but would instead be used to serve the private commercial interests of the lessee. The property under these circumstances would not be entitled to a tax exemption because it is not used exclusively for public purposes and therefore does not satisfy constitutional and statutory criteria." DM-188 (1992)

2. Assuming that the City holds legal and equitable title to the Maintenance Premises and assuming that the Maintenance Premises are not "public property used for public purposes" under Texas Tax Code Section 11.11, is the fee simple interest in the Maintenance Premises taxable to the City?

3. Does the City, as a matter of law, have equitable title in the Majors Field Facility for purposes of ad valorem taxes on the real property in light of various restrictions, a right of reversion, and the ability to compel transfer of legal title held by the federal government?

   The City holds legal title to the Maintenance Premises, but has no present possessory interest as a result of its lease agreement with L-3. The City cannot transfer its interests in the Majors Field Facility or alter the operations at that facility without prior approval from the U.S. Government. After World War II, the U.S. Government transferred its interests in the Majors Field Facility to the City subject to certain restrictions and with a right of reversion. Under the 1947 Agreement, read together with relevant federal statutes, executive orders, and administrative authorities, the U.S. Government has the unilateral right, under certain conditions, to cause the title, right of possession and all rights originally transferred to the City to revert to the U.S. Government. The City cannot transfer the Majors Field Facility without U.S. Government approval, and the

restrictions on the property remain until released by the U.S. Government. The 1947 Agreement and other relevant federal authorities are attached as Exhibit "D."

4. Assuming that the City has legal and equitable title to the Majors Field Facility, is the facility public property used for public purposes?

In Irving Independent School District v. Delta Airlines, Inc., 534 S.W.2d 365 (Tex. Civ. App. – Texarkana 1976, writ ref'd n.r.e.), the court held that Delta Airlines leasehold interest in a private maintenance hangar was a tax exempt public transportation facility under the predecessor of Texas Tax Code § 25.07. In that case, Delta Airlines leased a 15.49 acre tract of land and improvements from the cities of Dallas and Fort Worth at the Dallas-Fort Worth Regional Airport. The improvements at issue were a private maintenance hangar, not accessible to the general public, which were connected to the airline passenger terminal and airport runways by an extensive taxiway system. Delta Airlines used the maintenance hangar for periodic inspections of aircraft and extensive aircraft repair and maintenance. The court concluded that the land and improvements were used in operational support of air passenger service and were used in the operation of a public transportation facility.

Texas Attorney General's Opinion JM-464 (1986) considered whether a city was exempt from ad valorem taxes on the city operated airport, certain airport facilities which were leased to a private party who sold fuel to airplane operators, and land surrounding the airport that was leased to private parties for commercial purposes which included farming and ranching. The opinion addressed the taxation of the fee simple interests held by the city, but did not address the taxation of the leasehold interests held by the private parties. The opinion began with the following statement: "We have no difficulty in stating as a matter of law that the city's airport and airport facilities, including those leased to a private individual are impressed with a public purpose sufficient to meet Texas constitutional and statutory tests regarding ad valorem taxes." The opinion concluded that the airport and all airport facilities, including those leased to a private party, were public property used for public purposes. The opinion also concluded that land which was owned by the city, outside the airport facilities, and leased to private parties was not used for public purposes.

Texas Attorney General's Opinion DM-188 addressed the situation where an airport hangar, which was owned by the City of Amarillo and located at the Amarillo International Airport, was leased to a private party for the repair, maintenance and storage of aircraft. DM-188 construed JM-464 to require a showing that the use of municipal airport property is in direct support of the city's operation of the airport and that mere use of airport property for aircraft maintenance would be insufficient to protect the city from ad valorem taxes. DM-188 emphasized that, if most of the aircraft were brought to the maintenance hangar solely for maintenance and were not otherwise engaged in the transport of passengers to and from the airport, then the facility would not be used in support of the city's operation of the airport. Under those circumstances, DM-188 concluded that the maintenance hangar would not be entitled to a tax exemption because it was not used exclusively for public purposes. Finally, DM-188 noted that

there were disputed questions of fact in that case and declined to render an opinion on the taxation of either the fee interest or the leasehold interest as a matter of law.

These three authorities can be read as requiring that a maintenance hangar must be used directly in support of passenger traffic at the airport facility to be entitled to exempt status under Section 11.11 and Section 25.07. However, L-3 contends that a public transportation facility for purposes of Section 11.11 and Section 25.07 is not limited, as a matter of law, to airports engaged primarily or exclusively in air passenger operations.

5. Assuming that the City has legal and equitable title to the Majors Field Facility and that the Maintenance Premises are used for a public purpose, do the Maintenance Premises meet the statutory requirement for exemption of the leasehold interest, namely, is it a public transportation facility and are the buildings used for aircraft maintenance and services?

Please see discussion under 4 above.

6. Assuming that the City has legal and equitable title to the Majors Field Facility, do U.S. Constitutional principles limit ad valorem taxation of the fee interest?

Federal case law establishes that the Supremacy Clause of the U.S. Constitution prohibits a state or local taxing authority from imposing taxes in a manner that discriminates against the federal government and those with whom it deals. Phillips Chemical Co. v. Dumas Independent School District, 361 U.S. 376 (1960). L-3 argues that it uses the Maintenance Facilities to perform essential government functions related to the national defense on behalf of the federal government. L-3's reasoning is that, if the City leased the Majors Field Facility to a private party who used the property to perform government functions on behalf of the City, Texas law would treat the private party's activities as serving public purposes and the fee simple interest would be exempt. HCAD rejects L-3's argument that Supremacy Clause for the U.S. Constitution limits its ability in this case to tax the fee simple interest and that L-3's activities on behalf of the U.S. Government are serving public purposes. L-3's counsel submitted a letter to HCAD on April 26, 2010 (which is attached as Exhibit "E") on this issue and other relevant issues.

7. Would taxation of the fee simple interest or the leasehold interest in the Majors Field Facility violate the Texas Constitutional requirement that taxation be equal and uniform?

L-3 contends that taxation of either the fee interest or the leasehold interest in the Maintenance Premises would violate the Equal and Uniform Taxation Clause of the Texas Constitution because there are several similarly situated properties in Texas which are tax-exempt on both the fee interest and the leasehold interest.

* * *

I very much appreciate your assistance in resolving this issue. Please do not hesitate to contact my office if we may assist in any way.

Sincerely,

Bob Deuell

Robert F. Deuell, M.D.
Texas Senate, District Two
Chair, Committee on Dyslexia and Related Disorders

Enclosures
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