WILLIAM J. SCOTT
ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD

August 20, 1979

FILE NO. S-1457

REVENUE:
Compromise of Capital Stock
Assessments by State's Attorneys.
Method of Review of a Denial of
Tax Exempt Status of Property

-

J. Thomas Johnson
Acting Director
Department of Local Government Affairs
303 East Monroe Street
Springfield, Illinois 62706

Dear Mr. Johnson:

This responds to your request for opinions on two matters concerning assessment of property. First, you inquire about the legality of a practice which has arisen in several counties whereby State's Attorneys are making compromises of your department's assessments of capital stock of certain types of domestic corporations. Secondly, you inquire about the method of review of a decision by the Department when it denies an exemption.

With regard to your first question, I am of the opinion that the State's Attorney has no authority to compromise the

Department's assessments of capital stock. These assessments are made pursuant to the requirement of section 17 of the Revenue Act of 1939 (Ill. Rev. Stat. 1977, ch. 120, par. 498) and can be reviewed by the Department under the provisions of section 137 of the Revenue Act of 1939 (Ill. Rev. Stat. 1977, ch. 120, par. 618):

> "Upon the completion of the original assessments to be made by the Department, it shall publish a full and complete list of such assessments in the State 'official newspaper.' Any person or corporation feeling aggrieved by any such assessment may, within ten days of the date of publication of such 'official newspaper' containing such list, apply to the Department for a review and correction of the assessment complained of. Upon such review the Department may make such correcton, if any, therein as may be just and right."

The decision after administrative review may be judicially reviewed in the circuit court pursuant to the Administrative Review Act under section 138 of the Revenue Act of 1939 (Ill. Rev. Stat. 1977, ch. 120, par. 619):

> "The circuit court for the county in which the property assessed, or some part of such property, is situated shall have the power to review all final administrative decisions of the Department in administering this Act. The 'Administrative Review Act,' approved May 8, 1945, and all amendments and modifications thereof, and the rules adopted pursuant thereto, shall apply to and govern all proceedings for the judicial review of final administrative decisons of the Department hereunder. * * *
>
> * * * "

Section 1 of the Administrative Review Act (Ill. Rev.

Stat. 1977, ch. 110, par. 264) states in pertinent part:

" * * *

'Administrative decision' or 'decision' means any decision, order or determination of any administrative agency rendered in a particular case, which affects the legal rights, duties or privileges of parties and which terminates the proceedings before the administrative agency.
* * *

* * * "

A final assessment of capital stock by the Department of Local Government Affairs is a final administrative decision appealable to the circuit court pursuant to the provisions of section 138 of the Revenue Act of 1939. (Ill. Rev. Stat. 1977, ch. 120, par. 619.) The exclusive method of appealing a final assessment of personal property by the Department of Local Government Affairs must be pursuant to the Administrative Review Act (Ill. Rev. Stat. 1977, ch. 110, par. 264 et seq.), as provided in section 138. Illinois Bell Telephone Company v. Allphin (1975), 60 Ill. 2d 350; People v. Scudder Buick, Inc. (1971), 47 Ill. 2d 383; People ex rel. Chicago and North Western Railway Company v. Hulman (1964), 31 Ill. 2d 166.

Your letter states that in several counties a practice exists whereby some taxpayers obtain a judicial review of capital stock assessments made by your department by paying personal property tax on these assessments under protest and by filing objections in the circuit court. You report that some State's

Attorneys are compromising these capital stock assessments under the provisions of section 194a of the Revenue Act of 1939 (Ill. Rev. Stat. 1977, ch. 120, par. 675a), which provides as follows:

> "Upon the filing of an objection under Section 194 or a petition for refund under Section 195, the court must, unless the matter has been sooner disposed of, within 90 days after such filing hold a conference between the objector or petitioner and the State's Attorney. If no agreement is reached at the conference, the court must, upon demand of either the taxpayer or the State's Attorney, set the matter for hearing within 90 days of the demand. Compromise agreements on tax objections reached by conference between the objector or petitioner and the State's Attorney shall be filed with the court, and the State's Attorney shall prepare an order covering the settlement and file same with the clerk of the court within 15 days following said conference."

This section limits the authority of a State's Attorney to enter into a compromise agreement with an objector or petitioner to cases of real estate tax objections made under section 194 of the Revenue Act of 1939 (Ill. Rev. Stat. 1977, ch. 120, par. 675) and to petitions for refund of personal property taxes made under section 195 of the Revenue Act of 1939. Ill. Rev. Stat. 1977, ch. 120, par. 676.

Since capital stock is personal property, only section 195 is relevant. Section 195 provides in pertinent part:

> "Any person desiring to contest personal property taxes <u>because of illegal tax rates</u> shall be required to pay the same under protest.
> * * *

> At any time within one year from the date of paying personal property taxes * * * any person paying the same under protest may file a petition in the circuit court for the county where the payment under protest was made, praying for the return of all or any part of the personal property taxes so paid under protest. * * *
>
> * * * "

(Emphasis added.)

This section authorizes a taxpayer to contest personal property taxes only for illegal tax rates, not for an overassessment.

In Illinois Commercial Telephone Co. v. Smothers (1951), 411 Ill. 67, the Illinois Supreme Court has stated that it has grave doubts as to the propriety of a proceeding brought by a petitioner under section 195 to contest personal property taxes where the only disagreement is as to the amount of the assessment. The court, however, affirmed the dismissal of suit because the petition did not state sufficient facts to justify the application of the law of those cases upon which the plaintiff relied, rather than decide whether the petition was proper. The court did state at page 71:

> " * * *
>
> We have grave doubts as to the propriety of a proceeding by plaintiff under this section of the act. Section 195 of the Revenue Act provides that any person desiring to contest personal property taxes 'because of illegal tax rates' may pay the same under protest, and may, at any time within one year from the date of payment file a petition in the county court for the return of the amount paid under protest. In the instant cause there seems to be no argument as to the legality of the tax rate, but only a disagreement as to the amount of the assessment. * * * "

I therefore am of the opinion that a State's Attorney does not have authority to compromise assessments of capital stock made by your department.

In your second question, you ask whether review under the Administrative Review Act (Ill. Rev. Stat. 1977, ch. 110, par. 264 et seq.) is now the exclusive remedy for taxpayers claiming an exemption which has been denied by your department. I am of the opinion that it is.

In Christian Action Ministry v. Department of Local Government Affairs (1978), 74 Ill. 2d 51, to which you refer, the Illinois Supreme Court determined that exemption decisions of your department are subject to review pursuant to the Administrative Review Act. (Ill. Rev. Stat. 1977, ch. 110, par. 264 et seq.) That case overruled American College of Surgeons v. Korzen (1967), 36 Ill. 2d 340. The court stated in the Christian case at page 59:

" * * *

> In Korzen, the taxpayer, a not-for-profit organization, sued to enjoin the collection of taxes on property which the Cook County assessor and board of appeals had approved as charitably exempt but the Department of Revenue had not. This court, on the basis of [People ex rel.] Hillison [v. Chicago, Burlington & Quincy R.R. Co. (1961), 22 Ill. 2d 88], determined that the taxpayer's equity suit was proper and that the Administrative Review Act, which the collector argued was the taxpayer's only recourse under section 138 of the Revenue Act of 1939, was appropriate only for decisions relating to original assessments of property. Korzen must be overruled because the legislature intended the Administrative Review Act to encompass

> all final decisions of the Department of Local Government Affairs (Ill. Rev. Stat. 1975, ch. 120, par. 619), including, we believe, exemptions. Questions about the propriety of an exemption or denial of exemption clearly lend themselves to meaningful judicial review. * * *
>
> * * * "

This case, however, did not decide whether such review was exclusive. Section 108 of the Revenue Act of 1939 (Ill. Rev. Stat. 1977, ch. 120, par. 589) provides for judicial review of exemptions when an attempt is made to collect the tax. It provides in pertinent part:

> "In counties containing less than 1,000,000 inhabitants, the board of review shall, in any year, whether the year of the quadrennial assessment or not:
>
> * * *
>
> (6) The board of review shall hear and determine the application of any person who is assessed on property claimed to be exempt from taxation. If the board shall determine that any such property is not liable to taxation and the question as to the liability of such property to taxation has not previously been judicially determined, the decision of the board shall not be final unless approved by the Department; * * *. If the Department is satisfied that such property is not legally liable to taxation, it shall notify the board of review of its approval of such decision, and the board shall correct the assessment accordingly. But if the Department is satisfied that such property is liable to taxation, it shall advise the board of its objections to such decision and the assessment upon such property shall not be removed from the assessment list, but the persons making application for such exemption may offer the claim of exemption as a defense in any judicial proceeding for the collection of taxes on such assessment, and, whenever

> such defense is offered, the question of exemption shall be determined by the judgment or order of the court. * * *
>
> * * * "

Section 119 of the Revenue Act of 1939 (Ill. Rev. Stat. 1977, ch. 120, par. 600) provides essentially the same procedure for counties containing more than 1,000,000 inhabitants.

In Christian Action Ministry v. Department of Local Government Affairs (1978), 74 Ill. 2d 51, neither of the foregoing statutory provisions was expressly mentioned by the court. These statutory provisions appeared in substantially the same language prior to 1947. In 1947 sections 138 and 139 of the Revenue Act of 1939 (Ill. Rev. Stat. 1947, ch. 120, pars. 619, 620) were amended by Senate Bill 301, approved July 18, 1947. (Laws of 1947, p. 1433.) This amendatory Act, which is still in force and effect, provided that the Administrative Review Act was to apply and govern all proceedings for the judicial review of final administrative decisions of the Department of Revenue. (The responsibility for the administrative decisions under discussion has since been transferred to the Department of Local Government Affairs.)

Section 2 of the Administrative Review Act (Ill. Rev. Stat. 1977, ch. 110, par. 265), which contained substantially the same language in 1947, provides in pertinent part:

> "This Act shall apply to and govern every action to review judicially a final decision of

> any administrative agency where the Act creating or conferring power on such agency, by express reference, adopts the provisions of this Act. In all such cases, any other statutory, equitable or common law mode of review of decisions of administrative agencies heretofore available shall not be employed after the effective date hereof.
>
> * * *

"

This provision is inconsistent with some of the provisions of subparagraph (6) of section 108 of the Revenue Act of 1939 (Ill. Rev. Stat. 1977, ch. 120, par. 589) and section 119 of the Revenue Act of 1939. (Ill. Rev. Stat. 1977, ch. 120, par. 600.) Section 2 provides that the Administrative Review Act governs every action to review judicially a final decision of an administrative agency where the Act creating or conferring power on such agency, by express reference, adopts the provisions of the Act and that any other statutory, equitable or common law mode of review heretofore available shall not be employed. The method of reviewing a denial of an exemption by your department which is stated in sections 108 and 119 of the Revenue Act of 1939 (Ill. Rev. Stat. 1977, ch. 120, pars. 589, 600) has thus been superseded or impliedly repealed when the Administrative Review Act was made applicable to final decisions of your department. The amendment of an Act always operates as a repeal of provisions of the Act to the extent that they are changed by and rendered repugnant to the amendatory Act. City of Metropolis

v. Gibbons (1929), 334 Ill. 431; Lindquist v. Seventy-Eight Petitioners (1951), 344 Ill. App. 400.

Furthermore, when legislation creating an administrative agency in Illinois expressly and affirmatively adopts the Administrative Review Act as the mode of judicial review, Illinois courts have consistently held that the remedy under the Administrative Review Act is exclusive and that alternate methods of direct review or collateral attack are not permitted. (See, Chicago Welfare Rights Organization v. Weaver (1973), 56 Ill. 2d 33, 38-39; People ex rel. Chicago and North Western Railway Company v. Hulman (1964), 31 Ill. 2d 166, 169; People ex rel. Stone v. Wilson (1969), 111 Ill. App. 2d 101.) In Moline Tool Co. v. Department of Revenue (1951), 410 Ill. 35, at 37-38, it was held that the Administrative Review Act was designed to provide a single uniform method by which decisions of the administrative agencies, whose creating statutes adopted the provisions of the Administrative Review Act by express reference, could be judicially reviewed.

Where the Act creating an agency has expressly adopted the provisions of the Administrative Review Act, the Illinois Supreme Court limits any exceptions to the general rule that the remedy under the Administrative Review Act is exclusive. (See, Illinois Bell Telephone Company v. Allphin (1975), 60 Ill. 2d 350.) The court held in Christian Action Ministry v.

Department of Local Government Affairs (1978), 74 Ill. 2d 51, 59, that the legislature intended the Administrative Review Act to encompass all final decisions of the Department of Local Government Affairs, including the denial of an exemption. The court stated that questions about the propriety of an exemption or denial of an exemption clearly lend themselves to meaningful judicial review.

I am therefore of the opinion that review under the Administrative Review Act is the exclusive remedy for taxpayers claiming an exemption which has been denied by your department.

Very truly yours,

ATTORNEY GENERAL