

# **Bond Case Briefs**

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## **TAX - ILLINOIS**

### **Peterson Plaza Preservation, L.P. v. City of Chicago Department of Finance**

**Appellate Court of Illinois, First District, Fifth Division - June 21, 2019 - N.E.3d - 2019 IL App (1st) 181502 - 2019 WL 2588724**

Taxpayers filed claims for refunds with city department of finance, based on municipal code section providing exemption for transfers of title to real property.

ALJ granted summary judgment in favor of department of finance, upholding denial of taxpayers' refunds. After actions were consolidated, the Circuit Court upheld the administrative decision denying taxpayers' refunds. Taxpayers appealed.

The Appellate Court held that:

- Taxpayers' use of its enterprise zone property to provide residential housing to low-income families was not primarily commercial purpose;
- Municipal tax ruling was not unconstitutionally vague; and
- Taxpayers failed to show there was no reasonable distinction, under uniformity clause, between hotels and motels and taxpayers' federally subsidized residential apartment buildings.

Taxpayers' use of its enterprise zone property to provide residential housing to low-income families under federal program designed to aid low-income families was not primarily commercial purpose within meaning of municipal code section providing transfer tax exemption for enterprise zone property used primarily for commercial or industrial purposes; although taxpayers provided free services to tenants, such as general education development (GED) classes, literacy programs, health screenings and job training, and taxpayers had intended to establish on-site leasing offices from which they would conduct business of owning, leasing, managing, improving, and maintaining residential apartments, taxpayers primarily used rental units inside enterprise zones to provide residential housing for low-income families, and had dedicated between 87% to 100% of each of their properties to tenant living space, instead of for sale or provision of goods and services.

City's tax ruling, which provided that more than 50% of property in enterprise zone must be used for commercial purposes as to qualify for municipal code exemption from transfer taxation, was not unconstitutionally vague as applied to taxpayers' action alleging their properties consisting of residential and commercial use should qualify for exemption, where amount of space devoted to residential versus commercial use in properties had been quantified, each of taxpayers' properties had allocated between 87% and 100% of its space to residential use for low-income families, and taxpayers did not need to guess at meaning of tax ruling to determine exemption did not apply.

Taxpayers failed to show there was no reasonable distinction, under uniformity clause of Illinois Constitution, between hotels and motels that were classified as properties primarily used for commercial purposes and thereby exempted from transfer taxation, and taxpayers' federally subsidized residential apartment buildings, where taxpayers provided no evidence that their

federally funded housing developments for low-income residences inside enterprise zones would have same direct impact on business growth and local economy as hotels and motels, which encourage additional traffic and draw constant influx of visitors, including tourists and out-of-town guests, that patronize businesses and inject money into local economy.