



Oak Park Elementary School District 97

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TO: Dr. Albert G. Roberts, Superintendent

FROM: Therese M. O’Neill, Assistant Superintendent for Finance and Operations

RE: Tax Objections – 2007 and 2008

DATE: June 23, 2015

The District’s legal counsel (Hodges, Loizzi, Eisenhammer, Rodick & Kohn), as part of their overall services to District 97, have reviewed, assessed and recommended guidance specific to tax objections related to the District’s 2007 and 2008 tax levies. Attached is a detailed description of the tax objections, which are summarized as follows:

1. **Objection to Entire Levy – Failure to Timely File Budget Resolution – 2007**
2. **Life Safety Limited Bonds Fund Levy is Illegal – 2007**
3. **Excessive Loss in Collection (various funds) – 2007 and 2008**
4. **Excessive Accumulation in the Education Fund – 2007 and 2008**
5. **Limited Bonds Fund Levy is Illegal or Used for Illegal Purposes – 2007 and 2008**

Below is chart demonstrating possible exposure if we choose to challenge these objections:

<u>Category – by Item Above</u>	<u>2007 Exposure</u>	<u>2008 Exposure</u>
#1	\$ 5,540,517	
#2	\$ 30,628	
#3	\$ 48,222	\$ 173,892
#4	\$ 188,544	\$ 361,229
#5	\$ 322,445	\$ 403,076

Legal counsel believes that, except for category #3 (Excessive Loss in Collection), these objections can be defended against. The Excessive Loss in Collection claims, however, would be difficult to defend, which exposes the District to a potential loss of as much as \$222,114, plus interest, if the District litigates these objections. The attorney for the tax objectors has made a settlement offer to the District of 8 mills for each tax objection year, which would result in a complete settlement of all of the claims for \$31,848 (\$14,503 for 2007 and \$17,345 for 2008).

I am recommending we give our legal counsel authority to settle these 2007 and 2008 objections as delineated in their communication dated May 26, 2015 and we, District 97, refrain from participation in further litigation related to these objections, including the Joint Motion for Summary Judgment regarding the Limited Bonds Fund levy objection.

tmo
Attachment (1)

Hodges Loizzi
Eisenhammer Rodick & Kohn LLP

Christopher M. Hoffmann
choffmann@hlerk.com

RECEIVED
MAY 29 2015
BUSINESS OFFICE

May 26, 2015

CONFIDENTIAL / ATTORNEY-CLIENT PRIVILEGED

Via Electronic Mail and First Class Mail

Ms. Therese O'Neill
Oak Park Elementary School District No. 97
970 Madison St.
Oak Park, IL 60302-4430

Re: 2007 and 2008 Tax Rate Objections

Dear Ms. O'Neill:

We are writing to inform you of the current status of the above-referenced tax objections. As you are aware, several tax objections have been filed against the District for both the 2007 and 2008 tax years. Below we discuss these objections and the status of the tax objectors' settlement offers.

As an initial matter you should note that the potential liability of the District on each claim set forth below is limited to the percentage of the equalized assessed value ("EAV") of the District that the objectors represent as a total. For example, if the total EAV of your District for 2007 was one hundred million dollars and the tax objectors represented twenty million dollars of EAV, 20% of the EAV would be at issue. Accordingly, we have calculated this percentage for each tax year at issue and reference it in each analysis of the claims below.

2007 TAX RATE OBJECTIONS

1. Objection to the entire 2007 tax levy on the basis that the District failed to file its Budget Resolution with the county clerk within 30 days of its adoption;
2. Excessive allocation for loss in collection in the IMRF Fund levy;
3. Excessive allocation for loss in collection in Social Security Fund levy;
4. Excessive allocation for loss in collection in the Building Bonds Fund levy;
5. Excessive allocation for loss in collection in the Limited Bonds Fund levy;
6. The levy for the Limiting Bond Fund is illegal, or, alternatively, a portion of the levy is illegal because the levy was extended in violation of the Tax Extension Act;

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7. The levy for the Life Safety Limited Bonds is illegal, or, alternately, a portion of the levy is illegal because the levy was extended in violation of the Tax Extension Act; and
8. Excessive accumulation in the Education Fund.

2008 TAX RATE OBJECTIONS

1. Objection is made to a portion of the Limited Bonds Fund levy on the basis that the levy was used to pay the premium and interest on Working Cash Fund bonds that should have been issued by referendum;
2. Excessive allocation for loss in collection in the Education Fund levy;
3. Excessive allocation for loss in collection in the Building Bonds Fund levy;
4. Excessive allocation for loss in collection in the Limited Bonds Fund levy;
5. The levy for the Limiting Bonds Fund is illegal, or, alternately, a portion of the levy is illegal because the levy was extended in violation of Tax Extension Act; and
6. Excessive accumulation in the Education Fund.

Objection to Entire Levy – Failure to File Timely Budget Resolution – 2007

For the 2007 tax year, the objectors allege that the entire levy is illegal because the District failed to file its Budget Resolution with the county clerk within 30 days of its adoption. The Property Tax Code authorizes the County Clerk to refuse to extend the levy if the taxing district fails to file the Budget Resolution; however, merely failing to file the Budget Resolution does not void the levy or entitle the objectors to a refund. Accordingly, it is extremely unlikely the tax objectors would prevail on this claim. Nonetheless, if the District litigates this objection and loses, the refund to the objectors will be approximately \$5,540,517, plus interest.

Life Safety Limited Bonds Fund Levy is Illegal - 2007

The objectors allege that entire 2007 levy for the Life Safety Limited Bonds Fund is illegal because the tax extension base was illegally calculated by the District. In the past, these objections have not been one of the substantive objections pursued by the tax objectors. Historically, we have been successful in having this objection withdrawn by the objectors. This year, however, the tax objectors have chosen to litigate a similar objection to the Limited Bonds Fund levy, as discussed below, involving another school district. The objectors may be less willing than in prior years to withdraw this objection. The total amount at risk to the District on this objection is \$30,628, plus interest.

Excessive Loss in Collection – 2007 and 2008

“Loss in collection” is an addition made to taxing district levies by the county clerk to cover anticipated losses from uncollected taxes. (In past years, this addition was referred to as the “loss

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and costs” factor, but the county clerk now refers to it as “loss in collection.”) Historically, the county clerk adds an additional 3% or 5% to certain levies for such uncollected taxes. Long standing legal precedent has established the appropriateness of the addition of a “loss in collection” factor to take into account the past history of losses and deductions that have occurred in the collection of revenue. *Edwards v. People*, 88 Ill. 340 (1878). Courts have held, however, that such action must be based on sound business considerations and that not all shortfalls in revenue collection are appropriately recouped by the addition of a “loss in collection” factor to a levy.

Here, in 2007, the county clerk added 5% to the District’s Building Bonds and Limited Bonds Fund levies and 3% to the District’s IMRF and Social Security Fund levies to account for such losses in collection. In 2008, the county clerk once again added a 5% factor to the District’s bond funds and 3% to the District’s operating funds to account for such losses in collection, and the objectors allege that these factors were inappropriate. Based on our discussions, we understand that the District has a history of high collection rates and, in fact, most often the addition of a “loss in collection” factor of greater than 1% would lead to excessive loss in collection. The history of collections creates a likelihood that the objectors would prevail on their claims. Based on the rates at issue and the EAV represented by the objectors in 2007, the potential loss to the District if the taxpayers prevailed at a trial on all of these excessive loss in collection objections would be approximately **\$48,222**, plus interest. If the taxpayers prevailed at a trial on all of their 2008 excessive loss in collection objections, they would be entitled to a refund of approximately **\$173,892**, plus interest.

Excessive Accumulation in the Education Fund - 2007 and 2008

For the 2007 and 2008 tax years, there are objections against the Education Fund levies alleging that the District permanently transferred funds from the Working Cash Fund to a fund other than the Education Fund. The objectors contend that Section 20-5, 20-8, and 20-9 of the *School Code* provide that permanent transfers of funds from the Working Cash Fund must be made to the Education Fund. Similar objections have been litigated extensively in DuPage County and, in *G.I.S. Venture v. Novak*, 2014 IL App (2d) 130244, the Second District Appellate Court held that the proper way to analyze such claims is to add the funds transferred from the Working Cash Fund to the Education Fund and then determine whether the addition of the transferred funds to the Education Fund would result in an excessive accumulation of assets in the Education Fund.

An excess accumulation objection is based on the rulings of the Illinois courts, that, although a taxing district can levy in excess of current need in order to operate on a cash basis, *unnecessary accumulation* is in violation of public policy, and a levy or tax rate resulting in such unnecessary accumulation is illegal. *People ex. re. Toynton v. Commonwealth Edison Co.*, 285 Ill.App.3d 357, 221 Ill.Dec. 16, 674 N.E.2d 809, 812 (3d Dist. 1996). In Illinois, a rebuttable presumption is established that an excess accumulation exists if the total amount of money available in the

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fund in question is at least two (2.0) times the average of the prior three years' annual expenditures from that fund. Of course, if a district has knowledge of an unusual anticipated call on that fund, or the levy in question was for a purpose other than mere accumulation, such factors could constitute a valid defense to the accumulation objections. At worst, such information would constitute leverage for negotiating a settlement of the objections with the objecting taxpayers.

For 2007, the objectors allege that the District illegally transferred \$1,600,000 from the Working Cash Fund to the Building Fund. According to the District's 2007 annual financial report, at the start of the 2007-2008 fiscal year, the District had \$32,493,397 available in its Education Fund. The addition of the \$1,600,000, which represents the amount transferred from the Working Cash Fund to the Building Fund, brings the total amount available in the Education Fund to \$34,093,397. Meanwhile, the District's average annual expenditures for the three years preceding the 2007 levy equal \$46,774,065. The total funds available at the start of the fiscal year in the Education Fund are only 0.73 times the District's average annual expenditures in its Education Fund. Accordingly, the 2007 claim is without merit.

For 2008, the objectors allege that the District illegal transferred \$2,900,000 from the Working Cash Fund to the Tort Fund. At the start of the 2008-2009 fiscal year, the District had \$32,714,092 available in its Education Fund. The addition of the \$2,900,000 of funds transferred from the Working Cash Fund to the Tort Fund brings the total available in the Education Fund to \$35,614,092. The District's average annual expenditures for the three fiscal years preceding the 2008 levy year were \$48,057,134. The total funds available at the start of the fiscal year in the Education Fund are only 0.74 times the District's average annual expenditures in its Education Fund. Accordingly, the 2008 claim is also without merit.

Based upon the above stated law and our review of the District's annual financial reports, it appears that excessive accumulation objections are invalid. However, if the objectors were to succeed on their objections, they would be entitled to a refund of **\$188,544**, plus interest, for the 2007 tax year and **\$361,229**, plus interest, for the 2008 tax year.

The Limited Bonds Fund Levy is Illegal or Used for an Illegal Purpose – 2007 & 2008

The objectors have two related objections to the 2007 and 2008 Limited Bonds Fund levies. First, the objectors allege that the entire 2007 Limited Bonds Fund levy was illegal because the tax extension base was illegally calculated by the District. The objectors make the same objection in 2008. For 2008, the objectors also object to the Limited Bonds Fund levy on the basis that the District used a portion of the levy to pay the premium and interest on Working Cash Fund bonds that were used for capital improvements. The objectors contend that, because the Working Cash Fund bonds were used for capital improvements, they should have been issued as building bonds, which require a referendum. The objectors argue that the Working Cash Fund

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bonds were illegal because they were not issued pursuant to referendum and, therefore, any portion of the Limited Bonds Fund levy used to pay on the Working Cash Fund bonds is likewise illegal. The objectors have similar objections pending against approximately 100 school districts in Cook County.

In the past, these objections have not been one of the substantive objections pursued by the tax objectors. Historically, we have been successful in having this objection withdrawn by the objectors. However, the objectors have now determined to litigate these objections against one Cook County school district, Schaumburg 54, as a test case. Many of the school districts with these objections anticipate filing a Joint Motion for Summary Judgment on or before June 30, 2015. The District may choose to participate in the Joint Motion; however, if the District were to participate and the tax objectors' prevailed, the objectors would be entitled to a refund of **\$332,445**, plus interest, for the 2007 tax year and **\$403,076** for the 2008 tax year, plus interest.

Settlement Negotiations

The attorney for the tax objectors has made an initial settlement offer to the District of 8 mills for each tax objection year. (A "mill" is equivalent to a .00001 refund rate.) Based upon the EAV at issue in these objections, the approximate dollar equivalent for the settlement offer is **\$14,503** for 2007 and **\$17,345** for 2008.

Although we believe that the excess accumulation objections to the Education Fund and the objections to the Limited Bonds Fund are defensible, the Loss in Collection Objections would be difficult to defend. Due to the size of the loss in collection factors and the amount of funds at risk, as well as the legal costs to defend the tax objections, it is our opinion that the Board should authorize settlement of the outstanding tax rate objection at the rate of 8 mills per year, with the understanding that we will attempt to obtain a lower settlement.¹ The tax objectors' attorney, however, has been unwilling to negotiate his settlement offers this year because of the litigation surrounding the Limited Bonds Fund objections.

Once the above information has been presented to the Board, please let me know what action the Board would like to pursue so we may convey our response to the tax objectors' attorney. If the Board desires to participate in the litigation involving the objections to the Limited Bonds Fund levy, please notify our office by June 1, 2015, so we have sufficient time to gather the information required to participate in the joint motion.

¹ Please note that unlike other lawsuits where a payout is required to the prevailing party, in tax objection cases the payout to the objectors is taken from a future levy distribution and tendered directly to the objectors.

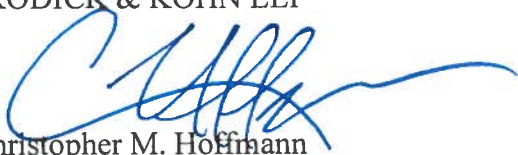
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As always, if you have any questions regarding any of these objections, please do not hesitate to call.

Sincerely,

HODGES, LOIZZI, EISENHAMMER,
RODICK & KOHN LLP



Christopher M. Hoffmann

CMH/gw

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