

FOR ACTION

AGENDA ITEM: 2.4.7

June 11, 2013

SUBJECT: 2005 and 2006 Tax Rate Objections

MOTION: That the Board of Education of Oak Park District 97, approve the recommendation of its legal counsel, Hodges, Loizzi, Eisenhammer, Rodick & Kohn, in setting the 2005 and 2006 Tax Rate Objections as outlined in the memorandum to the superintendent dated May 28, 2013.



Oak Park Elementary School District 97

970 Madison ▪ Oak Park ▪ Illinois ▪ 60302 ▪ ph: 708.524.3000 ▪ fax: 708.524.3019 ▪ www.op97.org

TO: Dr. Albert G. Roberts, Superintendent of Schools
FROM: Therese M. O'Neill, Assistant Superintendent for Finance & Operations
RE: 2005 and 2006 Tax Rate Objections
DATE: May 28, 2013

Attached is a detailed letter from Steven M. Richart, legal counsel from Hodges, Loizzi, Eisenhammer, Rodick & Kohn, specializing in tax rate objections, explaining a multiplicity of tax rate objections filed for tax years 2005 and 2006. Each objection is explained in detailed in his letter and I am summarizing the potential financial impact of both years below.

<u>Category of Objection</u>	<u>Likelihood of Overcoming</u>	<u>Potential Loss to D97</u>
Excess Accumulation – Tort (2005)	Unlikely	\$ 29,654
Improper Expenditures – Tort (2005)	N/A	\$ 29,654 *
Excessive Loss in Collection – 2005	Not Sure	\$ 80,702
Excessive Loss in Collection – 2006	Unlikely	\$ 37,960

- **Given that the objectors are presenting both Excess Accumulation and Improper Expenditures as claims, only one category can be refunded.**

The total possible loss to District 97 totals \$148,316 (\$29,654 + \$80,702 + \$37,960) plus interest as well as legal fees to litigate. Our legal counsel has succeeded in acquiring an initial settlement of \$15,128 for 2005 objections and \$10,832 for 2006 objections which represents a total of \$25,960 or 17.5% of the total exposure, exclusive of interest and legal fees. Our legal counsel further states:

Although we believe that the 2005 Loss in Collections objections may be defensible, the excess accumulation claim in the Tort Immunity Fund appears to be valid and the 2006 Loss in Collection Objections would be quite difficult to defend as well. Due to the size of the excessive accumulation and 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 objections at the rate of 8 mils per year, with the understanding that we will attempt to obtain a lower settlement.

I fully support the recommendation of our legal counsel to approve the settlement recommendations for the 2005 and 2006 tax rate objections and direct Hodges, Loizzi, Eisenhammer, Rodick & Kohn to go forward with this settlement. This will return to the Board for formal action at its June 11, 2013 meeting.

tmo
attachment (1)

Hodges Loizzi
Eisenhammer Rodick & Kohn LLP

Steven M. Richart
srichart@hlerk.com

RECEIVED

MAY 02 2013

BUSINESS OFFICE

April 30, 2013

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: 2005 and 2006 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 2005 and 2006 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 (hereinafter "EAV") of the District that the objectors represent as a total. For example, if the total EAV of your District for 2006 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.

2005 TAX RATE OBJECTIONS

1. A portion of the Tort Immunity Fund is used for general corporate purposes;
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 Education Fund levy;
5. Excessive allocation for loss in collection in the Building Fund levy;
6. Excessive allocation for loss in collection in the Building Bonds Fund levy ;
7. Excessive allocation for loss in collection in the Limited Bonds Fund levy;
8. Excessive allocation for loss in collection in the Life Safety Limited Bond Fund levy;
9. 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;
10. 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
11. Excessive accumulation in the Tort Immunity Fund.

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2006 TAX RATE OBJECTIONS

1. Excessive allocation for loss in collection in the IMRF Fund levy;
2. Excessive allocation for loss in collection in the Social Security 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. Excessive allocation for the loss in collection in the Life Safety Limited Bond levy;
6. 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
7. The levy for the Life Safety Limited Bonds Fund is illegal, or, alternately, a portion of the levy is illegal because the levy was extended in violation of Tax Extension Act.

Tort Immunity Fund – Excess Accumulation – 2005

For the 2005 tax year, there is an objection against the Tort Immunity Fund levy alleging that there was excessive accumulation in the Tort Immunity Fund. The approximate amount at issue in this objection for the 2005 tax year is **\$29,654**. This dollar amount is based upon 12.77% of the District's EAV at issue for 2005.

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 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.

Based upon the above stated law and documents forwarded to us from your District, we have attempted to determine the validity of the objectors' excess accumulation claim. Upon our review of your District's documents, it appears the District had an excess accumulation of funds in the Tort Immunity Fund for 2005. Our calculations reveal that the accumulation in the Tort Immunity Fund at the time of the 2005 levy was approximately twenty-five (25) times the average annual expenditure for the prior three (3) years. This evidence creates a strong presumption that the accumulation was excessive, and a likelihood that the objectors would

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prevail on this claim at trial. If the District litigates this objection and loses, the refund to the objectors will be approximately \$29,654, plus interest.

Tort Immunity Fund – Improper Expenditures – 2005

In addition to the above excess accumulation allegation, there is a further objection alleging that the 2005 Tort Immunity Fund Levy was utilized by the Board for general corporate purposes. This objection is based on the premise that by statute, only certain expenditures may be made with tort funds. 745 ILCS 10/9-107; see *In re Objections to Tax Levies of Freeport School District No. 145*, 372 Ill. App. 3d 562 (2nd Dist. 2007). The approximate amount at issue for this objection is the same as for the excess accumulation objection above (\$29,654); however, please note that the objectors cannot obtain refunds on both objections, as they only paid the District's Tort Immunity Fund taxes once for the year in question. To ascertain the validity of this objection with certainty, a detailed analysis of the expenditures from the Tort Fund is required, but such a review is unnecessary in our opinion at this juncture in light of our findings concerning excess accumulation in the Tort Immunity Fund. Should the Board desire to challenge these objections, we will conduct further review to ensure that the tort expenditures were valid.

Excessive Loss in Collection – 2005

“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 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). However, courts have held 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 2005, the county clerk added 5% to the District's Building Bonds, Limited Bonds and Life Safety Limited Bonds Fund levies and 3% to the District's IMRF, Social Security, Educational and Operations and Maintenance Fund levies to account for such losses in collection. The documents tendered by the District are conflicting concerning the collections history at the time of the 2005 levy. On one hand, an annual financial disclosure dated as of June 30, 2005, shows a declining collections history at the time of the 2005 levy, with collection rates of 98.23% in 2002, 96.60% in 2003 and 95.84% in 2004. On the other hand, the District's audited financial report for the year ended June 30, 2005, shows different collections rates for the same years of 96.75% in 2002, 98.21% in 2003 and approximately 91.32% in 2004. To make

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matters more complicated, financial data from the 2006-2007 fiscal year shows collection rates of 99.23%, 100.10% and 100.78% for these same years. In short, arguments can be made either way as to whether the imposition of the 5% and 3% loss in collection factors was necessary and appropriate in 2005. Based on the rates at issue and the EAV represented by the objectors in 2005, 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 **\$80,702**, plus interest.

Excessive Loss in Collection – 2006

These objections are similar to those described above for 2005 and pertain to the District's 2006 levies for IMRF, Social Security, Building Bonds, Limited Bonds and Life Safety Limited Bonds Funds. Once again, in 2006, the county clerk added a 5% factor to the District's various bond funds and 3% to the District's operating funds (IMRF and Social Security) to account for such losses in collection, and the objectors allege that these factors were inappropriate. While we do not have the exact collections history available at the time of the 2006 levy, documents pertaining to the 2006-07 fiscal year show a greatly improved collections history as compared with the 2005 tax year, with collection rates of 99.23% in 2002, 100.10% in 2003 and 100.78% in 2004. (These later numbers reflect collections of delinquent taxes for those years through tax sales, etc.) As such, the available evidence does not appear to support the imposition of the 5% and 3% loss in collection factors in 2006. This creates a likelihood that the objectors would prevail on these claims at trial. Based on the rates at issue and the EAV represented by the objectors in 2006, 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 **\$37,960**, plus interest.

The Limited Bonds Fund Levy is Illegal – 2005 & 2006

The Life Safety Limited Bonds Fund Levy is Illegal – 2005 & 2006

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. We are currently in discussion with the attorney and hope to have this objection withdrawn.

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 **\$15,128.00** for 2005 and **\$10,832.00** for 2006.

Although we believe that the 2005 Loss in Collection objections may be defensible, the excess accumulation claim in the Tort Immunity Fund appears to be valid and the 2006 Loss in

Hodges Loizzi
Eisenhammer Rodick & Kohn LLP

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Collection Objections would be quite difficult to defend as well. Due to the size of the excessive accumulation and 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 Due to the strength of the objectors' case for the excess accumulation claim in the Tort Immunity Fund in particular, we may not be able to negotiate a lower settlement, however.

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.

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

Sincerely,

HODGES, LOIZZI, EISENHAMMER,
RODICK & KOHN



Steven M. Richart

SMR/ces

cc: James S. Levi

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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.