

PT 10-04

Tax Type: Property Tax

Issue: Religious Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

v.

**HOUSE OF PRAISE FAMILY CHURCH
Applicant.**

**No. 09-PT-0029
Real Estate Exemption**

**For 2008 Tax Year
P.I.N. 15-16-307-025
Kane County Parcel**

**Julie-April Montgomery
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Pastor Pat McManus, *pro se* on behalf of House of Praise Family Church; Paula M. Hunter, Special Assistant Attorney General, on behalf of the Department of Revenue of the State of Illinois.

SYNOPSIS:

The Illinois Department of Revenue (“Department”) issued a “Denial of Non-homestead Property Tax Exemption” (“Denial”) on March 12, 2009 to the House of Praise Family Church (“Applicant”) for the 2008 tax year. The basis of the denial was threefold. The Department found that the real estate identified by Kane County Parcel Index Number 15-16-307-025 (“subject property”) had: 1) no exempt ownership, 2) no exempt use and 3) Applicant was not the owner but the lessee of the subject property. Applicant protested the Denial and requested a hearing in the matter. Applicant proffered testimonial and documentary evidence at the hearing held on December 10, 2009.

The sole issue to be determined is whether Applicant was entitled to a religious property tax exemption. October 5, 2009 Pre-Trial Order. Following the submission of all evidence and a review of the record, it is recommended that the Department's Denial be affirmed. In support thereof, are made the following findings of fact and conclusions of law.

FINDINGS OF FACT:

1. The subject property is owned by Force Development LLC ("Force"). Tr. p. 12.
2. Applicant leased subject property from Force. Tr. pp. 8-9, 11.
3. Force paid the property taxes for the subject property. Tr. pp. 5-6.
4. Applicant's rent could be reduced by the amount of the subject property's real estate tax if the subject property was deemed exempt from property tax. *Id.*
5. On March 12, 2009, the Department denied Applicant's exemption request for the tax year 2008, after a determination that the subject property lacked both exempt ownership and use for the tax year 2008, and Applicant was not the subject property's owner but its lessee. Department Ex. No. 1 (Department Denial of Non-homestead Property Tax Exemption); Tr. p. 7.

CONCLUSIONS OF LAW:

Article IX, Section 6 of the Illinois Constitution of 1970 limits the General Assembly's power to exempt property from taxation as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The General Assembly may not broaden or enlarge the tax exemptions permitted by the constitution or grant exemptions other than those authorized by the constitution. Board of Certified Safety Professionals v. Johnson, 112 Ill. 2d 542 (1986). Furthermore, Article IX, Section 6 does not, in and of itself, grant any exemptions. Rather, it merely authorizes the General Assembly to confer tax exemptions within the limits imposed by the constitution. Locust Grove Cemetery v. Rose, 16 Ill. 2d 132 (1959). Thus, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App. 3d 497 (1st Dist. 1983).

Pursuant to constitutional authority, the General Assembly enacted section 15-40 (a)(1) of the PTC which, in relevant part provides for exemption of “[p]roperty used exclusively for religious purposes...as long as it is not used with a view to profit.” 35 ILCS 200/15-40 (a)(1).

It is well established that property tax exemption provisions are strictly construed in favor of taxation. Chicago Patrolmen’s Association v. Department of Revenue, 171 Ill. 2d 263, 271 (1996). The party claiming the exemption bears the burden of proving, by clear and convincing evidence, that it is entitled to the exemption, and all doubts are resolved in favor of taxation. *Id.* Moreover, there exists a presumption that no tax exemption is intended. Victory Christian Church v. Department of Revenue, 264 Ill. App. 3d 919 (1st Dist. 1994). Furthermore, “all facts are to be construed and all debatable questions resolved in favor of taxation.” *Id.* at 922.

At hearing, the principal reason the Department relied on for the Denial of Applicant's exemption was that the subject property was leased to Applicant, with a view to profit, by the owner of the subject property, Force.

In support of its argument, the Department cited Victory, *supra*, for the proposition that:

[B]efore one looks to the primary use to which the property is used after leasing, one must first look to see if the owner of the real estate is entitled to exemption from property taxes. If the owner of the property is exempt from taxes, then one may proceed to examine the use of the property to see if the tax exempt status continues or is destroyed. Victory at 922.

In Victory, an individual leased property to a church that used the property for exclusively religious purposes. The court agreed with the Department's argument that "[w]hile legal ownership is not a test for exemption, ... leasing a property for profit precludes exemption even when the lessee uses the property exclusively for religious purposes....The property is not tax exempt because its owner is a private entity that collects rent and is profit motivated." *Id.* Because the property owner in Victory was leasing the property with a view to profit, the court affirmed the Department's denial of an exemption for the property that was admittedly being used for exempt purposes by the lessee.

Applicant admits Force, not Applicant, was the owner of the subject property. Tr. p. 12. Applicant also admits that it leased the subject property from Force in exchange for rent payments. Tr. p. 11. No evidence or claim was made that Force was entitled to a property tax exemption. Consistent with the law, the fact that Applicant paid rent to Force must be construed to find that Force's lease of the subject property was motivated

by a view to profit. Like the lease of the property by a third party to a church with a view to profit in Victory, *supra*, and “[i]n light of the presumption in favor of taxation, we conclude that...the [subject] property was not exempt from property taxes. To decide otherwise would allow any private property not entitled to exemption to become tax exempt merely by leasing it to a religious...organization.” Victory at 922-23.

Applicant’s response is to argue that it “is paying taxes...[when it is] not supposed to” (tr. p. 16) because its lease provides that the rent can be reduced if the subject property is found to be tax exempt. Tr. p. 8.

The Department’s answer to Applicant’s argument is that whether or not Applicant receives a reduction in rent is immaterial. The Department asserts that the subject property owner’s entitlement to a property tax exemption is the determinative issue. The Department states that when a property owner leases its property with a view to profit, the fact that the lessee of the property is a religious entity, such as a church, does not negate that the statute requires one consider the property owner’s use of the property. Tr. p. 14.

In response to Applicant’s rent reduction argument, the Department cites American National Bank and Trust Co. v. Department of Revenue, 242 Ill. App. 3d (2nd Dist. 1993) which found that property owned by a for profit entity and leased to a church that used the property for religious purposes was not exempt from property taxes even though the lease required the church pay the property owner a monthly amount for property taxes.

In the present case, Applicant only paid rent. No evidence was presented to show Applicant paid the property taxes. In fact, the record reflects that Force paid the property

taxes. Tr. pp. 5-6. While Applicant's lease was not proffered at the hearing, the parties agree that if the subject property were found to be tax exempt Applicant's rent could have been reduced. *Id.* Like the church in American National, *supra*, Applicant's payment or nonpayment of the property taxes would not have altered the fact that the owner, Force, leased the subject property with a view to profit, and as such, the subject property was not entitled to a tax exemption.

Applicant presented only the Certificate of Occupancy and Compliance for another parcel. No other documentation was presented by Applicant to establish its entitlement to a property tax exemption. In addition, Applicant's testimony did not provide clear and convincing evidence that it was entitled to a property tax exemption. To the contrary, Applicant's testimony revealed facts, such as Force was the owner of the subject property who leased it to Applicant for rents payments, which must be construed in favor of a finding that the subject property was subject to tax.

RECOMMENDATION:

For the reasons stated above, it is recommended that the Department's determination which denied the exemption from the 2008 real estate taxes should be affirmed and Kane County parcel identified by P.I.N. 15-16-307-025 should not be exempt from property taxes in 2008.

February 2, 2010

Julie-April Montgomery
Administrative Law Judge