

**PT 12-09**

**Tax Type: Property Tax**

**Issue: Religious Ownership/Use**

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

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**LIBERTY TEMPLE FULL  
GOSPEL CHURCH, INC.,**

**APPLICANT**

**v.**

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

**No: 10-PT-0062 (09-16-337)**

**Real Estate Exemption**

**For 2009 Tax Year  
P.I.N. 20-31-101-032-0000**

**Cook County Parcel**

**Kenneth J. Galvin  
Administrative Law Judge**

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**RECOMMENDATION FOR DISPOSITION**

**APPEARANCES:** Mr. Abrar Azdmuddin, The Law Offices of Burton A. Brown, on behalf of Liberty Temple Full Gospel Church, Inc.; Ms Paula Hunter, Special Assistant Attorney General, on behalf of the Department of Revenue of the State of Illinois.

**SYNOPSIS:**

This proceeding raises the issue of whether real estate, identified by Cook County Parcel Index Number 20-31-101-032-0000 (hereinafter the "subject property"), qualifies for exemption from 2009 real estate taxes under 35 ILCS 200/15-40, wherein all property used exclusively for religious purposes, and not used with a view to profit, is exempted from real estate taxation.

The controversy arises as follows: On December 2, 2009, Liberty Temple Full Gospel Church, Inc., (hereinafter "Liberty") filed an Application for Property Tax Exemption with the Cook County Board of Review (hereinafter the "Board"). The Board reviewed Liberty's

application and recommended to the Illinois Department of Revenue (hereinafter the “Department”) that the exemption be denied. After reviewing the Board’s recommendation, the Department issued a determination, dated July 29, 2010, denying the requested exemption on the grounds that the property was not in exempt ownership. Dept. Ex. No. 1. On September 29, 2010, Liberty filed a request for a hearing as to the denial and presented evidence at a formal evidentiary hearing on November 9, 2011, with testimony from Sheraine Lathon, Liberty’s Senior Pastor, and Timothy Balin, Co-owner and President of Home Acquisition, Inc. At the evidentiary hearing, the parties stipulated that the subject property was used for religious purposes in 2009. Tr. p. 12. Accordingly, the only issue to be determined is whether the subject property was used with a view to profit in 2009. Following submission of all evidence and a careful review of the record, it is recommended that the Department’s denial be affirmed.

**FINDINGS OF FACT:**

1. Dept. Ex. No. 1 establishes the Department’s jurisdiction over this matter and its position that the subject property was not in exempt ownership in 2009. Tr. pp. 11-12; Dept. Ex. No. 1.
2. Liberty is located at 2231 through 2301 West 79<sup>th</sup> Street in Chicago. The sanctuary seats up to 1,500 people. Liberty is exempt from sales tax in the State of Illinois as an organization “organized and operated exclusively for religious purposes” as of December 9, 2005. Tr. pp. 19-20, 23; App. Ex. C.
3. On August 28, 1990, the Department exempted 90% of the P.I.N. at issue “except for the 4,070 square feet being leased and 9 parking spaces (property not in exempt use).” The 4,070 square feet was leased to business tenants. Tr. pp. 19, 21-23; App. Ex. B.

4. Oak Park Investments purchased the year 2000 taxes on the subject property and transferred the right to the Tax Deed to Home Acquisition, Inc. (hereinafter "HAI"). On January 16, 2004, the Cook County Circuit Court issued an "Order Directing Issuance of Tax Deed" for the subject property based on the petition of HAI. On November 16, 2004, a Tax Deed was issued to HAI. Tr. pp. 14-15, 42-44; App. Ex. E and F.
5. On July 8, 2005, Liberty filed a "Petition for Indemnity" against the Cook County Treasurer alleging that Liberty had failed to pay their year 2000 real estate taxes "and was unable to redeem the sale of those taxes because the Church was led to believe that the property in question was tax exempt ..." "When the Church was served, they checked with Cook County and found that the Church was still tax exempt ..." "In reality, only 80-90% was tax exempt." Liberty argued that, because of Cook County's error resulting in the tax sale of the property, it was entitled to indemnity from Cook County's "Indemnity Fund," for the fair market value of the property as of November 16, 2004. Tr. pp. 15-16, 24-25; App. Ex. G.
6. On January 20, 2005, Liberty entered into an "Agreement" with HAI. The Agreement states that Liberty "wishes to remain in possession of the premises." In the event that Liberty was successful with its Petition for Indemnity, Liberty agreed to assign the rights to the judgment to HAI and authorize the County Treasurer to issue a check to HAI. HAI would then reconvey title to the premises to Liberty by warranty deed, "provided that the principal amount of said [indemnity] judgment is for not less than 90% of the fair market value of the property ..." If Liberty's Petition for Indemnity was denied by the Circuit Court, Liberty had the right to purchase the property from HAI at fair market value. Liberty was responsible for all taxes, insurance, special assessments and utilities "incurred prior to, or after issuance, of the Tax Deed." In addition, the Agreement required Liberty to pay HAI \$5,000/month for

use and occupancy of the premises. According to the Agreement, this use and occupancy payment was not “the fair market rental value of the property” but HAI allowed Liberty “to remain in possession of said property by paying a reduced use and occupancy as partial consideration for this Agreement.” The Agreement states that a landlord-tenant relationship was not created between the parties. Tr. pp. 26-32, 44-51; App. Ex. D.

7. On June 19, 2009, Liberty and HAI entered into another “Agreement” which “supersedes any prior agreement.” This Agreement states that “[T]he claim of indemnity against the ... Indemnity Fund will be settled for \$870,000...” The Agreement includes an “Assignment of Judgment,” in which Liberty assigns the \$870,000 to HAI, with HAI executing a special warranty deed, dated June 19, 2009, to be held in escrow, conveying the property to Liberty. As of the date of the evidentiary hearing, there had been no transfer of ownership and the warranty deed had not been released from escrow because of “other financial considerations.” Tr. pp. 36-41, 52-55; Dept. Ex. No. 2.

### **CONCLUSIONS OF LAW:**

An examination of the record establishes that Liberty has not demonstrated, by the presentation of testimony, exhibits and argument, evidence sufficient to warrant exempting the subject property from property taxes for tax year 2009. In support thereof, I make the following conclusions.

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 (1<sup>st</sup> Dist. 1983).

Pursuant to its Constitutional mandate, the General Assembly enacted the Property Tax Code, 35 ILCS 200/1-3 *et seq.* The provision in the Property Tax Code which governs the disposition of the instant proceeding is in Section 200/15-40, which states that property used exclusively for religious purposes qualifies for exemption “as long as it is not used with a view to profit.” 35 ILCS 200/15-40(a).

It is well established in Illinois that a statute exempting property from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation. Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430 (1<sup>st</sup> Dist. 1987). Moreover, the burden of proving the right to a property tax exemption is on the party seeking exemption, and courts have required such party to prove, by clear and convincing evidence, that it falls within the appropriate statutory exemption. Winona School of Professional Photography v. Department of Revenue, 211 Ill. App. 3d 565 (1<sup>st</sup> Dist. 1991). Whenever doubt arises, it is to be resolved against exemption and in favor of taxation. People ex rel. Lloyd v.

University of Illinois, 357 Ill. 369 (1934). The level of proof contained in the record of this case does not satisfy the standard of clear and convincing evidence that applies, without exception, in property tax cases.

The subject property is located at 2231 through 2301 West 79<sup>th</sup> Street in Chicago. The sanctuary seats up to 1,500 people. Tr. pp. 19-20. Liberty is exempt from sales tax in the State of Illinois as an organization “organized and operated exclusively for religious purposes” as of December 9, 2005. Tr. p. 23; App. Ex. C. In 1990, the Department exempted 90% of the subject property “except for the 4,070 square feet being leased and 9 parking spaces (property not in exempt use).” The 4,070 square feet was leased to business tenants. Tr. pp. 19, 21-23; App. Ex. B.

Liberty apparently failed to pay their year 2000 taxes. Oak Park Investments purchased these taxes and transferred the right to the Tax Deed to HAI. On January 16, 2004, the Cook County Circuit Court issued an “Order Directing Issuance of Tax Deed” for the subject property based on the petition of HAI. On November 16, 2004, a Tax Deed was issued to HAI. Tr. pp. 14-15, 42-44; App. Ex. E and F.

On July 8, 2005, Liberty filed a “Petition for Indemnity” against the Cook County Treasurer alleging that Liberty had failed to pay their year 2000 taxes “and was unable to redeem the sale of those taxes because the Church was led to believe that the property in question was tax exempt ...” “When the Church was served, they checked with Cook County and found that the Church was still tax exempt ...” “In reality, only 80-90% was tax exempt.” Liberty argued that, because of Cook County’s error resulting in the tax sale of the property, it was entitled to indemnity from Cook County’s “Indemnity Fund,” for the fair market value of the property as of November 16, 2004. Tr. pp. 15-16, 24-25; App. Ex. G.

On January 20, 2005, Liberty entered into an “Agreement” with HAI. The Agreement states that Liberty “wishes to remain in possession of the premises.” In the event that Liberty was successful with its Petition for Indemnity, Liberty agreed to assign the rights to the judgment to HAI and authorize the County Treasurer to issue a check to HAI. HAI would then reconvey title to the premises to Liberty by warranty deed, “provided that the principal amount of said [indemnity] judgment is for not less than 90% of the fair market value of the property as determined by an appraisal...” If Liberty’s Petition for Indemnity was denied by the Circuit Court, Liberty had the right to purchase the property from HAI at fair market value as indicated by an appraisal. Liberty was responsible for all taxes, insurance, special assessments and utilities “incurred prior to, or after issuance, of the Tax Deed.” In addition, the Agreement required Liberty to pay HAI \$5,000/month for use and occupancy of the premises. This use and occupancy payment, according to the Agreement, was not “the fair market rental value of the property” but HAI allowed Liberty “to remain in possession of said property by paying a reduced use and occupancy as partial consideration for this Agreement.” The Agreement states that a landlord-tenant relationship was not created between the parties. Tr. pp. 26-32, 44-51; App. Ex. D.

On June 19, 2009, with 2009 being the year at issue in these proceedings, Liberty and HAI entered into another “Agreement” which “supersedes any prior agreement.” This Agreement states that “[T]he claim of indemnity against the ... Indemnity Fund will be settled for \$870,000 ...” The Agreement includes an “Assignment of Judgment,” in which Liberty assigns the \$870,000 to HAI, with HAI executing a Special Warranty Deed, dated June 19, 2009, to be held in escrow, conveying the property to Liberty. As of the date of the evidentiary

hearing, there had been no transfer of ownership and the warranty deed had not been released from escrow because of “other financial considerations.” Tr. pp. 36-41, 52-55; Dept. Ex. No. 2.

The record in this case forces me to conclude that the subject property was used by HAI with a view to profit in 2009, a use which is proscribed by 35 ILCS 200/15-40. In 2009, HAI held legal title to the subject property. HAI is a “real estate holding company.” Tr. p. 42. Absent evidence of record to the contrary, I must conclude that HAI is a for-profit corporation and that when HAI purchases delinquent taxes, eventually leading to a tax deed, they are purchasing the taxes with a view to profit. If the primary use of property is for the production of income, that is, “with a view to profit,” the tax exempt status is destroyed. Children’s Development Center v. Olson, 52 Ill. 2d 332 (1972).

In American National Bank and Trust Company v. Dep’t of Revenue, 242 Ill. App. 3d 716, 724 (2d Dist. 1993), plaintiff leased property to Zion’s Lighthouse, which used the property for religious purposes. The lease was for \$3,200/month, with Zion having the option to purchase the property and the responsibility to pay property taxes. The Court, “in light of the presumption in favor of taxation,” determined that the owner of the property leased it for profit and consequently determined that the property was taxable, stating that “[W]hether property is used for profit depends on the intent of the owner in using the property.” In the instant case, Mr. Balin, the co-owner of HAI, never testified that HAI’s purchase of the delinquent taxes was not-for-profit. I cannot infer a charitable or religious motive to HAI when none has been testified to or demonstrated.

The facts in the case of Victory Christian Church v. Dep’t of Revenue, 264 Ill. App. 3d 919 (1<sup>st</sup> Dist. 1994) are similar to the instant case. Victory Church, a religious organization, leased a two story building and three vacant lots used for parking from Colonial Bank and Trust,

under trust number 872, whose sole beneficiary was George Apostolou. Victory Church agreed to pay approximately \$8,000/month and property taxes if the request for exemption was denied. All parties agreed that the property was used for exempt purposes. The Department of Revenue argued that it is the property owner's use, not the lessee's use, that is dispositive in determining whether the property is entitled to an exemption. The Department argued that "leasing a property for profit precludes exemption even when the lessee uses the property exclusively for religious purposes" because "its owner is a private entity that collects rent and is profit motivated." *Id.* at 921.

The Court noted that before one looks to the primary use to which the property is used after the leasing, one must look to see if the owner of the property 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." *Id.* at 922. In the instant case, HAI, a for-profit company, is not exempt from property taxes. I must conclude that HAI is a private entity that collects rent and is profit motivated.

And in 2009, HAI used the subject property with a view toward profit. Mr. Balin testified that he could not recall the amount that HAI paid for Liberty's year 2000 taxes. Tr. pp. 52-53. But in the year 2009, Liberty was required, by the "Agreement" to pay HAI \$5,000/month for "use and occupancy of the premises." <sup>1</sup> The Agreement states that this \$5,000 is "not the fair market rental value of the property" but HAI is "allowing" Liberty to remain in possession of the premises "by paying a reduced use and occupancy as partial consideration for this Agreement."

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<sup>1</sup> Counsel for Liberty objected to the Department's statement in closing argument that HAI was paid \$5,000/month "in rental payments." According to Liberty's Counsel, "there was no testimony as to how much was eventually received." "That question was never asked by either counsel." Tr. p. 57. If Liberty paid less than \$5,000/month or did not pay the \$5,000/month as required by the Agreement, it was incumbent on Liberty's Counsel to put this in the record. Absent any testimony or evidence on this issue, I must assume that the amount required by the Agreement was paid by Liberty to HAI.

App. Ex. D. According to Mr. Balin, the \$5,000 is “in consideration of entering into this repurchase agreement, [which] just makes them act as swiftly as possible to get the judgment on the indemnity fund to repurchase the property.” It was a “stick for them to continue on with their indemnity case.” Tr. pp. 50-51.

The concern in 35 ILCS 200/15-40 is whether the property is used with a view to profit, not whether the owner is maximizing his profit. In People v. Withers Home, 312 Ill. 136, 140 (1924), the Court noted that “former decisions of this court” show that the phrase “not leased or otherwise used with a view to profit,” “has the ordinary meaning of the words.” “If real estate is leased for rent, whether in cash or in other form of consideration, it is used for profit.” In Turnverein “Lincoln” v. Bd. Of Appeals, 358 Ill. 135, 144 (1934), the Court noted, with regard to the argument that income from the rented property was offset by operating expenses, that “it need only be observed that if property, however owned, is let for a return, it is used for profit and so far as liability to the burden of taxation is concerned, it is immaterial whether the owner actually makes a profit or sustains a loss.”

HAI’s property is “let for a return.” The “return” was \$5,000/month in 2009. If the \$5,000 was “partial consideration” for the repurchase agreement entered into between Liberty and HAI, Withers Home makes clear that even if rent is paid in an “other form of consideration,” the property is still used for profit. If the \$5,000/month is less than the fair market rental of the property, Turnverein makes clear that it is “immaterial” that HAI may be forgoing some profit by allowing Liberty to remain in possession. The property is still let for a return. If HAI has forgone profit, the organization has also avoided the costs of using the property. HAI purchased

the taxes with a tenant in place and the tenant is paying all upkeep expenses on the property including property taxes.<sup>2</sup>

In his closing argument, Counsel for Liberty argued that the facts in the instant case are similar to the facts of Christian Action Ministry v. Department of Local Government Affairs, 74 Ill. 2d 51, 61 (1978). In Christian Action, a ministry, a not-for-profit corporation, entered into a contract for warranty deed by paying \$30,000 down and \$2,500/month. The seller retained legal and equitable title. The Court granted a charitable property tax exemption to Christian Action, stating that regardless of the status of title, the ministry had a substantial interest in the property, “\$30,000 initially paid down on the property; monthly payments since March 1, 1973,” and was liable for the payment of real estate taxes. The Court noted that penalizing a charitable institution for “failing to acquire customary forms of financing” runs counter to the objective and policy consideration of encouraging charitable activity. *Id.* at 62.

The facts in the instant case are easily distinguishable from Christian Action. First, Liberty did not enter into the Agreements with HAI because they were unable to acquire “customary forms of financing.” They entered into the Agreements because Liberty lost the property to HAI through the issuance of a Tax Deed. There is no evidence in the record that Liberty applied, and was rejected for, other forms of financing. Second, HAI is not financing the purchase of the subject property for Liberty. The Agreements at issue have nothing to do with financing and HAI is not providing any money to Liberty for the purchase of the property. Third, unlike Christian Action, Liberty has not made a down-payment on the purchase of the property.

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<sup>2</sup> HAI has the potential for even more profit assuming that Liberty pays them \$870,000 received from the Indemnity Fund or repurchases the property from HAI at its fair market value. App. Ex. D; Dept. Ex. No. 2. HAI will then have received \$5,000/month during the term of the first Agreement and \$870,000 from the Indemnity Fund or the fair market value, as paid by Liberty. Pastor Lathon testified that Liberty had not yet seen a check or any sort of payment from the County Treasurer. Tr. pp. 40-41.

Christian Action had made approximately 5 years worth of monthly payments, with all payments going toward the purchase of the subject property. The \$5,000/month that Liberty is required to pay HAI is in consideration for entering into the Agreements. Liberty's monthly payments are not going toward the purchase of the subject property. In fact, Liberty has no rights in the property until it pays HAI either \$870,000 or the fair market value of the property. The terms of the Agreements do not give Liberty a substantial monetary interest in the subject property that would warrant granting it a property tax exemption.

As noted, *supra*, in Victory Christian Church, the property was owned by a private individual, not exempt from taxes, and the property was leased for profit. In the instant case, the subject property is owned by a for-profit corporation, not exempt from taxes, and the property is used with a view to profit. In Victory Christian Church, the Court found that the property was not exempt from property taxes reasoning that “[T]o decide otherwise would allow any private property not entitled to exemption to become tax exempt merely by leasing it to a religious or a school organization.” *Id.* at 923. The reasoning applies equally in the instant matter and the Court's decision in Victory Christian Church strongly supports affirming the denial of the exemption for the subject property.

WHEREFORE, for the reasons stated above, it is recommended that the Department's determination which denied the exemption from 2009 real estate taxes should be affirmed and Cook County Parcel, identified by P.I.N. 20-31-101-032-0000, should not be exempt from property taxes in 2009.

April 5, 2012

Kenneth J. Galvin  
Administrative Law Judge