

**PT 16-05**

**Tax Type: Property Tax**

**Tax Issue: Religious Ownership/Use**

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

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**OMEGA MISSIONARY BAPTIST CHURCH,  
APPLICANT**

**v.**

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

**No: 14-PT-044 (13-16-916)  
Real Estate Exemption  
For 2013 Tax Year  
P.I.N. 20-03-318-005, 006,  
007 and 008  
Cook County Parcels**

**Kenneth J. Galvin  
Administrative Law Judge**

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**RECOMMENDATION FOR DISPOSITION**

**APPEARANCES:** Mr. William J. Seitz and Ms. Nicole Annes, Law Offices of William J. Seitz, LLC, and Mr. John Babbington, John M. Babbington Law Offices, on behalf of Omega Missionary Baptist Church; Ms. Ashley Forte, 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 Numbers 20-03-318-005, 006, 007 and 008 (hereinafter the “subject property”) qualifies for exemption from 2013 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 and 35 ILCS 200/15-125, wherein parking areas, not leased or used for profit and owned by a religious institution, are exempted from real estate taxation.

The controversy arises as follows: On July 8, 2014, Omega Missionary Baptist Church (hereinafter “Omega”) filed an Application for Property Tax Exemption with the Cook County Board of Review (hereinafter the “Board”). The Board reviewed Omega’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 August 28, 2014, denying the requested exemption on the grounds that the property was not in exempt ownership. Dept. Ex. No. 1. On October 24, 2014, Omega filed a request for a hearing as to the denial and presented evidence at a formal evidentiary hearing on October 27, 2015, with testimony from Pastor Wilbert Taylor, a member of Omega who is being mentored by Pastor Joseph Henry, former Alderman Shirley Coleman, Pastor Joseph Henry, Senior Pastor of Omega for the past 31 years, Mr. Geres Tadros, sole beneficiary of a trust which owns the subject property and Ms. Nadine Coons, a member of Omega since 1979. 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, as established by the determination issued by the Department’s Office of Local Government Services on August 28, 2014, that the subject property “is not in exempt ownership.” Tr. pp. 5-7; Dept. Ex. No. 1.
2. At the evidentiary hearing, the Department conceded that the use of the building on the subject property is for religious purposes. Copies of “bulletins, brochures, advertisements and worship order” were offered into evidence by Omega showing that the Church is “an active functioning Church that is, in fact, doing things in the community.” Tr. pp. 15, 44-45, 50-52; App. Ex. Nos. 13, 14, 15 and 16.
3. The Department did not concede that the outside area on the subject property is used for religious purposes. Tr. p. 15.

4. Omega is affiliated with the National Baptist Conference, one of the largest African-American Baptist church organizations in the United States. Tr. pp. 18-19.
5. Omega, founded in 1945, has been located at 4621-4643 South State Street in Chicago since 1959. Tr. pp. 40-41.
6. Omega was incorporated under the Illinois “Not For Profit Corporation Act” on August 18, 1950. Omega is governed by a written “Constitution and Bylaws.” As of April 6, 1990, Omega has Internal Revenue Code Section 501(c)(3) status through its affiliation with “Greater New Era Baptist District Association and Auxiliaries of Chicago and Vicinity.” Omega is exempt from sales tax in the State of Illinois. Tr. pp. 40-43, 61-65; App. Ex. Nos. 6, 7, 11 and 12.
7. There were several high-rise buildings located in the area around Omega, including 13 buildings known as the “Robert Taylor Homes.” When the Housing Authorities began demolishing these high-rises, Omega lost many of its members. Omega was situated across the street from some of the demolished buildings and residents were relocated outside of the area. Alderman Coleman testified that attendance at Omega decreased from thousands to hundreds, resulting in a “drastic drop in donations.” As residents moved, Omega’s collections decreased and it could not afford to pay its mortgage. The bank foreclosed on Omega’s mortgage in 2006 and Omega was forced to declare bankruptcy in 2008. Tr. pp. 28-33; 78-84.
8. Mr. Tadros and the Tadros family have owned single-family residences, commercial properties, multi-use buildings and vacant land, predominantly on the south side of Chicago, since the 1970’s. Mr. Tadros’ father and uncles owned, *inter alia*, a grocery/liquor store

approximately 100 feet from Omega. Mr. Tadros' family closed the businesses when the high-rises were torn down. Tr. pp. 104-107.

9. In 2006, a "Judgment of Foreclosure and Sale," was entered against Omega. On February 21, 2007, Judicial Sales Corporation transferred the subject property to Suburban Bank and Trust under Trust No. 743947. The sole beneficiary of that trust is "47<sup>th</sup> & State, LLC," a member managed LLC, whose only manager is Mr. Tadros. Tr. pp. 7, 108-109, 126-129; App. Ex. No. 8.
10. Omega's December 31, 2012 through November 30, 2013, Financial Statements show "Total Income" of \$141,329, "Total Expenditures" of \$138,316 resulting in positive net revenue of \$3,103. "Total Expenditures" include a \$8,700 payment to "47<sup>th</sup> & State, LLC" for "use of the property." Tr. pp. 65-68; App. Ex. No. 5.
11. Omega has a "Use and Occupancy Agreement" (the "Agreement") with Mr. Tadros, "the authorized agent of 47<sup>th</sup> & State LLC" "which is the sole beneficiary of the title held in trust" "and known as Trust 743947." The Agreement began March 1, 2011 and continues for as long as the terms of the Agreement are met by Omega. The Agreement "shall not be considered to be a lease and no tenancy is created." The Agreement states under "Occupancy Payment" that "[T]he Owner does not intend to use the property for profit, nor is this [Agreement] intended to be a lease of the property." "The Occupancy Payment is intended to cover the Owner's costs of operating the property." "The Owner intends to break even, whereby the Occupancy Payment covers the costs." "For any given month, the amount of the Occupancy Payment will not be for a specific amount." "Instead, it shall be based on what the Occupant [Omega] can afford to pay, based on the church's income and expenses." Tr. pp. 69-71, 91-92, 109-110, 129-132, 140; App. Ex. Nos. 3 and 10.

12. The Agreement requires Omega to seek court review of the prior denial, by the Department, of the property tax exemption for the subject property for the 2008 tax year and/or pursue an exemption for a later year. “In the interim period, prior to securing an exemption, the Owner will be responsible to pay the real estate taxes.” Omega does not receive the property tax bills. The bills are sent to Mr. Tadros, and he does not forward them to Omega. Omega did not pay the 2013 property taxes, the year at issue in these proceedings. Tr. pp. 92, 140; App. Ex. No. 3.
13. The Agreement states under “Parking Areas” that Omega shall use the entire property for the same religious use: “public worship, Sunday school or religious instruction.” “This includes the land outside of the building.” The Agreement states that “[T]here shall be no designated parking spaces, and all land shall be used solely as part of carrying out the Church’s activities.” App. Ex. No. 3.
14. Pastor Henry testified that “during worship hour” Omega uses the property outside of the church, for parking. “Worship hour” consists of “regular Sunday services and Wednesday night services or whenever we have worship there.” Cars would be parked for 8 hours on Sunday and 4 hours on Wednesday. If Omega is having an outdoor event, the outside area is not used for parking. Omega does not have an outdoor activity every Sunday. Pastor Taylor testified that he parks on the subject property when he visits Omega. The areas used for parking are owned by Mr. Tadros, not Omega. Tr. pp. 22, 91-92, 97-99, 157-159.
15. Mr. Tadros’ Form 1040, Schedule E, for 2013 shows \$8,700 in “Rents Received” from the Omega property. Expenses on the property including cleaning and maintenance, insurance, legal and other professional fees, repairs, taxes, depreciation and other expenses totaled

\$29,954 resulting in a “loss” from the subject property of \$21,254. Tr. pp. 110-112; App. Ex. No. 4.

16. In 2013, Mr. Tadros reported gains from various real estate holdings. These gains were netted against the losses on the Omega property and other properties thereby reducing Mr. Tadros’ overall tax obligation. Tr. pp. 141-142; App. Ex. No. 4.

**CONCLUSIONS OF LAW:**

An examination of the record establishes that Omega 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 2013. 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.* There are two provisions in that statute which govern the disposition of the instant proceeding. Section 200/15-40 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). Section 200/15-125 states that parking areas, not leased or used for profit, when used as a part of a use for which an exemption is provided by the Code, and owned by a religious institution which meets the qualification for exemption, are exempt. 35 ILCS 200/15-125(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).

In opening arguments, Department’s counsel concisely outlined the three points at issue in this proceeding. “The main issue in this matter is whether Omega has standing to request a property tax exemption for taxes it did not pay, is not obligated to pay, and whether Mr. Tadros can receive a property tax exemption as a non-qualified property holder.” “The secondary issue

is whether the space used as a parking lot by Omega is eligible for an exemption when the property is not owned by Omega.” And thirdly, “the Department’s denial should be upheld because the property owner financially benefitted from Omega’s use of the property.” Tr. pp. 8-9. I agree with Department’s counsel that these are the three points at issue in this proceeding.

Omega, founded in 1945, has been located at 4621-4643 South State Street in Chicago since 1959. Tr. pp. 40-41. Omega is affiliated with the National Baptist Conference, one of the largest African-American Baptist church organizations in the United States. Tr. pp. 18-19. Omega was incorporated under the Illinois “Not For Profit Corporation Act” on August 18, 1950. Omega is governed by a written “Constitution and Bylaws.” As of April 6, 1990, Omega has Internal Revenue Code Section 501(c)(3) status through its affiliation with “Greater New Era Baptist District Association and Auxiliaries of Chicago and Vicinity.” Omega is exempt from sales tax in the State of Illinois. Tr. pp. 40-43, 61-65; App. Ex. Nos. 6, 7, 11 and 12. The Department conceded at the evidentiary hearing that Omega is an entity organized and operated for religious purposes. Tr. pp. 7-8, 14, 15.

There were several high-rise buildings located in the area around Omega, including 13 buildings known as the “Robert Taylor Homes.” When the Housing Authorities began demolishing these high-rises. Omega lost many of its members. Omega was situated across the street from some of the demolished buildings and residents were relocated outside of the area. Alderman Coleman testified that attendance at Omega decreased from thousands to hundreds, resulting in a “drastic drop in donations.” As residents moved, Omega’s collections decreased and it could not afford to pay its mortgage. The bank foreclosed on Omega’s mortgage in 2006 and Omega was forced to declare bankruptcy in 2008. Tr. pp. 28-33; 78-84.

**STANDING:** An examination of the record establishes that the applicant, Omega, lacks standing to bring a complaint seeking to exempt the subject property from 2013 real estate taxes under the Property Tax Code. In support thereof, I make the following conclusions.

The issue of standing rarely comes up in exemption cases because the property owner, who is liable for real estate taxes under Section 9-175 of the Property Tax Code, is also the applicant in most cases. Section 9-175 states that the owner of the property on January 1 in any year shall be liable for the taxes of that year. 35 ILCS 200/9-175. Because Section 9-175 imposes this liability, the owner/applicant's standing is not questioned, as the owner/applicant is presumed to have a "direct and substantial" financial interest in the outcome of the exemption proceeding. Highland Park Women's Club v. Department of Revenue, 206 Ill. App. 3d 447 (2d Dist. 1991).

In the instant case, however, the person who owns the subject property is not the applicant herein. The owner, Mr. Tadros, obviously has a separate and distinct legal identity from the applicant, Omega. Consequently, only Mr. Tadros, but not Omega, can benefit from the statutory grant of standing contained in Section 9-175. The Property Tax Code establishes procedures for the filing and administrative review of exemption complaints. Here, the owner of the property did not file an appropriate exemption complaint with the Board. Mr. Tadros did not seek a determination that his use of the subject property qualified as exempt. Neither the Property Tax Code nor the Departmental Hearing Regulations authorize me to conclude that Mr. Tadros and Omega are the same entity. Any conclusion that they are the same entity eludes the mandated statutory review process required by the Property Tax Code. There is currently no statutory or regulatory authority that allows me to permit such circumvention.

The applicant, Omega, cannot benefit from the statutory grant of standing contained in Section 9-175 because it did not own the subject property in 2013. Consequently, Omega can obtain the requisite financial stake in the outcome here, if and only if, 1) it is contractually obligated to pay real estate taxes on the subject property; or 2) it, in fact, paid such taxes for the 2013 assessment year; or 3) it is legally required to pay such taxes because its interest in the property at issue is subject to a leasehold assessment. *Id.*

The Use and Occupancy Agreement between Mr. Tadros and Omega requires Omega to seek court review of the prior denial, by the Department, of the property tax exemption for the 2008 tax year and/or pursue an exemption for a later year. In the interim period, prior to securing an exemption, the owner, Mr. Tadros, will be responsible to pay the real estate taxes. Tr. pp. 69-71, 91-92, 109-110, 129-132, 140; App. Ex. Nos. 3 and 10. Omega does not receive the property tax bills. The bills are sent to Mr. Tadros and he does not forward them to Omega. Pastor Henry testified that Omega did not pay the 2013 property taxes, the year at issue in these proceedings. Tr. pp. 92, 140. As the evidence conclusively shows, Omega is not contractually obligated to pay the taxes on the subject property and it did not, in fact, pay the taxes in 2013. Omega cannot claim an exemption from property tax that it is not obligated to pay.

Nor is Omega's "interest in the property" subject to a leasehold assessment. The Agreement states clearly that it "shall not be considered to be a lease and no tenancy is created." The Agreement is not "intended to be a lease of the property." App. Ex. No. 3. In fact, no leasehold assessment could be made in this case because a leasehold assessment only applies where tax-exempt property is leased to a non-exempt lessee, a situation not presented here. 35 ILCS 200/9-195. Accordingly, I am unable to conclude that Omega has the requisite financial stake to bring a complaint in the Department of Revenue to exempt the subject property from

2013 property taxes under the Property Tax Code. The fact that Omega does not have standing to bring the instant complaint for exemption is, in itself, sufficient reason to deny Omega's request for a property tax exemption for 2013. However, I will discuss the remaining issues in this case below.

**PROFIT:** Section 15-40 of the Property Tax Code allows exemption for religious purposes as long as the subject property "is not used with a view to profit." 35 ILCS 200/15-40. Section 200/15-125 allows exemption for parking areas, owned by a religious institution, if the parking area is "not leased or used for profit." In Victory Christian Church v. Department of Revenue, 264 Ill. App. 3d 919 (1<sup>st</sup> Dist. 1994), the Court noted that whether property is used for profit depends on the intent of the owner in using it.

The record in this case forces me to conclude that the subject property, including the church building and the area outside the church building used for parking, is used with a view to profit, a use which is proscribed by both 35 ILCS 200/15-40 and 35 ILCS 200/15-125. In 2013, Omega's Financial Statements show that \$8,700 was paid to Mr. Tadros for "use of the property." App. Ex. No. 5. Mr. Tadros' Form 1040, Schedule E, for 2013 shows \$8,700 in "Rents Received" from the Omega property.<sup>1</sup> App. Ex. No. 4. In 2013, Mr. Tadros reported gains from other real estate that he owns. These gains were netted against the loss on the Omega property and other losses on properties that Mr. Tadros owns, thereby reducing the income that Mr. Tadros had to pay taxes on and his overall tax obligation. Tr. pp. 141-142; App. Ex. No. 4. Mr. Tadros is using the Omega property for his financial benefit.

Mr. Tadros and his family have owned single-family residences, commercial properties, multi-use buildings and vacant land, predominantly on the south side of Chicago, since the

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<sup>1</sup> The rent is not divided between the church building and the areas used for parking so my conclusions here are applicable to the entire subject property.

1970's. Mr. Tadros' father and uncles owned, *inter alia*, a grocery/liquor store approximately 100 feet from Omega. Mr. Tadros' family closed the businesses when the high-rise residences were torn down. Tr. pp. 104-107.

Pastor Henry testified that he did not have any relationship with Mr. Tadros or the Tadros family prior to Omega's bankruptcy. Pastor Henry "knew of the family." He had no dealings with them, but he knew of the family because they owned properties around the community. Tr. pp. 84-86. Pastor Henry did not know the first name of Mr. Tadros' father. He testified that he does not socialize with the Tadros family. Tr. pp. 88-89.

It is difficult to discern Mr. Tadros' intent in his purchase and use of the Omega property. But I have difficulty believing that Mr. Tadros' purchase and use of the Omega property is motivated by a charitable impulse, rather than a commercial one, when the relationship between Omega and Mr. Tadros and the Tadros family appears to be so insubstantial. The argument that Mr. Tadros purchased this property and uses it for benevolent and non-profit purposes would be more believable if Omega was the only property he owned. But the testimony shows convincingly that Mr. Tadros and his family are in the business of buying, selling and renting commercial and retail properties on the south side of Chicago.

Nonetheless, Mr. Tadros' testified that he does not intend to make a profit on the Omega property. The Agreement between Mr. Tadros and Omega states succinctly that Mr. Tadros "does not intend to use the property for profit." App. Ex. No. 3. Alderman Coleman testified that she knows, "for a fact," that Mr. Tadros is "in it for a benevolent purpose." He is a "guardian angel to Omega." Tr. pp. 33-34. Mr. Tadros testified that his intent in purchasing the property was to keep Omega "in the place they have been in the past ... 60, 70 years or so." Tr. p. 127.

Counsel for Omega argued in his closing that Mr. Tadros' goal here is "benevolence." "It's not commercial." Tr. pp. 170-171.

Mr. Tadros was not asked at the hearing how many real estate properties he owns. His Schedule E for 2013 shows total "rents received" from all of his properties of \$403,027. The "income" from all of his properties was \$165,389 which he netted against losses of \$104,452 resulting in income from real estate rental of \$60,937. App. Ex. No. 4. The losses on his property of \$104,452 include the loss from the Omega property of \$21,254. Mr. Tadros obviously owns other properties that operate at a loss. According to Counsel's closing argument, I must presume that the purchases by Mr. Tadros and the use of those other loss properties were "commercial" rather than "benevolent," like Omega's. But there is no testimony in the record as to what distinguishes the properties that operate at a loss. The one factor that all of the loss properties have in common, whether they were purchased and used commercially or benevolently, is that they significantly lower Mr. Tadros' taxable income.

Mr. Tadros does not attend Omega. Tr. p. 140. According to his testimony, the question of him donating the subject property to Omega had come up a "few times" when he first purchased the property. He is not intending to make a donation of the property "at the present time." Tr. pp. 142-143. If he donated the property to Omega, he does not "think" Omega would be able to maintain it so he is keeping the property in his own name. Tr. pp. 147-148. Mr. Tadros testified, while looking at his "Schedule A, Itemized Deductions," "Gifts to Charity" that he did not make any monetary charitable donations in 2013. Mr. Tadros' charitable impulses are apparently limited to Omega. This was not explained at the evidentiary hearing. Mr. Tadros did testify that he "donated" about 20 lots to the City for "city gardens." However, these "donations" appeared on his 2013 Schedule 4797, "Sale of Business Property." Tr. pp. 149-151.

While Mr. Tadros' Schedule E shows that he has sustained a loss on the subject property, he has also avoided certain costs of renting the property. Mr. Tadros originally bought and subsequently rented the subject property with a tenant, Omega, already in place. Mr. Tadros saved the costs of having the subject property sit empty while he looked for a tenant that could make use of an existing church building. Mr. Tadros saved the costs of paying a broker to find a lessee for him. He saved the costs of offering an inducement to a tenant to lease the property.

Furthermore, Alderman Coleman described 47<sup>th</sup> Street, where the subject property is located, as "an up-and-coming street." Tr. p. 34. Pastor Henry testified that he thought Mr. Tadros wanted to hold the property "for future references or future improvements and developments in the third ward..." Tr. p. 86. Mr. Tadros testified that he does not "believe" that there is anything in the Agreement that would prohibit him from selling the property. Tr. p. 141. As the area becomes more "up-and-coming" and as the third ward improves and develops, there is nothing in the Agreement that would prevent Mr. Tadros from selling the property and making a profit on the sale. He may be making this profit after enjoying the benefit of several years of the property tax exemption that he is requesting here.

Alternatively, as the area becomes more "up-and-coming," attendance and collections may increase at Omega with their finances improving enough that they could repurchase the property from Mr. Tadros. Again, Mr. Tadros could be profiting from the repurchase after he enjoys the benefit of several years of the property tax exemption that he is requesting here. There is no mechanism in the Property Tax Code for the County to recoup property taxes lost if this exemption is granted and Mr. Tadros later sells this property at a profit. I fully understand the financial hardships that Omega is facing if this exemption is denied. However, I must conclude from the totality of the record in this case that Mr. Tadros has not clearly and convincingly

established that he did not purchase and is not currently using the Omega property with a view to profit, a use which is proscribed by the Property Tax Code.

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.” Mr. Tadros is leasing his property for rent: \$8,700 in rent in 2013. He also receives an “other form of consideration” by lowering his taxable income from netting the loss incurred from Omega against his other properties.

Mr. Tadros’ Form 1040, Schedule E, for 2013 shows expenses on the property including cleaning and maintenance, insurance, legal and other professional fees, repairs, taxes, depreciation and other expenses totaling \$29,954, resulting in a “loss” from the subject property of \$21,254. Tr. pp. 110-112; App. Ex. No. 4. 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.” Mr. Tadros’ property is “let for a return” and it is “immaterial,” according to the well-established case law, that he may have sustained a loss in 2013, a loss which ultimately lowered his tax obligations.

Mr. Tadros had the burden to prove, by clear and convincing evidence, that the subject property qualified for property tax exemption. City of Chicago v. Illinois Department of Revenue, 147 Ill. 2d 484 (1992). “The burden is a heavy one.” Provena Covenant Medical Center, 236 Ill. 2d 368 (2010). A basis for exemption may not be inferred when none has been

demonstrated. To the contrary, all facts are to be construed and all debatable questions resolved in favor of taxation. Follett's Illinois Book and Supply Store, Inc. v. Isaacs, 27 Ill. 2d 600 (1963). The totality of the record in this case forces me to conclude that it is "debatable" that Mr. Tadros purchased the Omega property and operated it in 2013 without the intent to make a profit and this issue must be resolved in favor of taxation.

**PARKING:** Parking spaces are only exempt from property tax under the Property Tax Code if they are owned by a religious institution. 35 ILCS 200/15-125. Mr. Tadros, who is not a "religious institution," owns the entire Omega property, including the church building and the area outside of the church. The Department conceded at the evidentiary hearing that the building on the subject property was used for religious purposes. However, the Department did not concede that the area outside of the church building is used for religious purposes. Tr. p. 15. Counsel for Omega stated in his opening argument that "the bottom line" is that the space outside of the church "is not a parking lot." "It's really a space used as part of the religious activities in the church." Tr. p. 11. Every attempt was made at the evidentiary hearing to convincingly present a case that the area outside of the church building was primarily used for religious purposes, rather than parking. The testimony on this issue was contradictory, and often absurd.

The Use and Occupancy Agreement states that Omega shall use the entire property for the same religious use: "public worship, Sunday school or religious instruction." "This includes the land outside of the building." The Agreement states that "[T]here shall be no designated parking spaces, and all land shall be used solely as part of carrying out the Church's activities." App. Ex. No. 3. These provisions are contained in the section of the Agreement oddly entitled "Parking Areas." The Agreement does not reveal where the congregants park when they attend

scheduled church services on Sunday and Wednesday. The Agreement does not explain how Omega uses the outside areas for public worship, Sunday school and religious instruction during Chicago winters.

According to Pastor Henry, the parking lot is used for ministry and “part of the ministry is parking.” Tr. p. 55. My own research does not show, and Counsel for Omega has not referred me to, any case that held that parking was church ministry. Pastor Henry, while looking at photographs and describing activities on the subject property, testified as follows: “[A]nd over here, I see where we are having a public picnic on the site, and this is the church parking lot, and on the parking lot we were having a car wash on one side, and the car wash was young folks’ activities...” Tr. pp. 53-54. While testifying with regard to a subsequent photograph, Pastor Henry testified that “young folk were out playing in the parking lot, eating, having fun.” Tr. pp. 54-55. While testifying about a subsequent photograph, Pastor Henry described a “bounce house” “where children are really out in the parking lot...” Tr. p. 55; App. Ex. No. 17. It should be noted here that Pastor Henry referred to the “parking lot” four times in this testimony, although Counsel for Omega stated in his opening argument that “the bottom line” is that the space outside of the church “is not a parking lot.” Tr. p. 11.

“Exterior Photographs” of the outside area were offered into evidence by Omega. The people in the photographs are dressed in summer clothes. The photographs show “activities at the end of our Vacation Bible School.” Ironically, the background of several of the photographs shows cars parked on the subject property. Tr. pp. 155-156; App. Ex. No. 17. “Vacation Bible School” was held from July 29 through August 2, 2013, nightly from 6:00 p.m. to 8:00 p.m. The flyer advertising Vacation Bible School does not state that it is held outdoors. App. Ex. No. 15. Although Vacation Bible School may be a religious use of property, Omega has failed to show

that it is a religious use of the outside property. However, if Vacation Bible School were a religious use of the outside property, I cannot recommend an exemption for the entire 2013 exemption year for the use of the outside area for 2 hours in the evening for 5 days.

Other use of the outside area is not inherently religious use and does not warrant an exemption of this area for religious purposes. Omega had a “Resurrection Day” “egg hunt” on March 31, 2013. The advertisement for the egg hunt does not state that it was held outdoors. App. Ex. No. 15. There was no testimony that the egg hunt, in March, was held outdoors. Pastor Taylor testified that children sometimes play on the property. There was no testimony that the children playing on the property were associated in any way with Omega. Children playing on the property and “egg hunts” are not inherently religious activities. There was no testimony as to how these activities constituted “religious use,” *i.e.* public worship, Sunday school or religious instruction, of the outside subject property.

There was considerable testimony about Beethoven Academic Center, a Chicago Public School located at 47<sup>th</sup> and State Street, near Omega. Omega has hosted Beethoven’s graduation for the past 15 years, including in 2013. Omega provides space for the Academic Center to come onto the subject property and have rehearsals three or four times prior to graduation. Pastor Henry testified that on the day of commencement, they take over the “whole facility,” including “the parking lot.” At graduation, there are “parents and people” outside Omega, (standing, I presume), on the subject property. Students “line up in ... columns of two and they walk over there and they walk back, and of course they have to be escorted.” There is no prayer or singing of religious hymns during this public school graduation ceremony. There are commencement speeches but there is no “religious aspect” to these speeches. Omega does not charge Beethoven for use of the property. Tr. pp. 48-49, 93-96, 99-100; App. Ex. No. 15.

Alderman Coleman rode by the church and “graduates were standing on that land.” Tr. pp. 36-37. Public school graduation is not an inherently religious activity. There was no testimony as to how public school graduation constituted “religious use,” *i.e.* public worship, Sunday school or religious instruction, of the outside subject property. If public school graduation were a religious use of the outside property, I cannot recommend an exemption for the property for the entire 2013 assessment year based on the one day that graduation took place.

In order to exempt the parking area as a “religious use” of the property, Omega must show that the parking lot is “exclusively” used for religious purposes. 35 ILCS 200/15-40. Section 15-40(a) of the Property Tax Code exempts “[a]ll property used exclusively for religious purposes...” and “not leased or otherwise used with a view to profit.” 35 ILCS 200/15-40 (1996). The main issue to be determined then in this case is what use constitutes the “exclusive” use of the subject property. The word “exclusively” when used in Section 200/15-40 and other exemption statutes means “the primary purpose for which property is used and not any secondary or incidental purpose.” Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App. 3d 186 (4<sup>th</sup> Dist. 1933).

There can be only one primary use of property. The religious exemption statute, 35 ILCS 200/15-40, requires that an exemption be given only if the use claimed for exemption is the exclusive use of the property. The legislatively mandated requirement that property be “exclusively” used for the exemption claimed cannot be disregarded and the fundamental and primary use of the property cannot be ignored. “The right to a tax exemption is to be accorded to schools, charitable and religious organizations only when the property claimed to be exempt is exclusively used for either one of the three purposes.” “Property is generally susceptible of more than one use at a given time and the exemption is determined upon the primary use, and not upon

any secondary or incidental use.” People ex rel. Marsters v. Missionaries, 409 Ill. 370, 375 (1951).

Omega may have more than one use of the outside property but the question of whether it is entitled to exemption for religious purposes must be determined from its primary use. The evidence and testimony clearly indicate, and I am forced to conclude, that the primary use of the subject property outside of the church building is for parking.

Pastor Henry testified that “during worship hour” Omega uses the property outside of the church, for parking. “Worship hour” consists of “regular Sunday services and Wednesday night services or whenever we have worship there.” According to Pastor Henry, cars would be parked for 8 hours on Sunday and 4 hours on Wednesday. On Wednesday, there is Bible class at noon and evening service. Pastor Henry testified that cars are parked on the outside area for 16 hour/week. Nadine Coons testified that if Omega is having an outdoor event on Sunday, the outside area is not used for parking. Omega has a service every Sunday but does not have an outside activity every Sunday. Pastor Taylor also testified that he parks his car on the subject property when he visits Omega. Tr. pp. 22, 91-92, 97-99, 157-159.

As the testimony indicates, parking is the most regular and consistent use of the area outside of the church building. This area is used for parking 16 hours/week or 832 hours/year. This is the exclusive and primary use of the outside property. No other activity testified to by Omega’s witnesses approaches this magnitude of usage. Other activities on the subject property, as testified to by Omega’s witnesses, represent an incidental and secondary use of the outside area. And there is no evidence in the record that these activities, other than Vacation Bible School which may use the outside area for 10 hours/year, constitute “religious use,” *i.e.* public worship, Sunday school or religious instruction, of the outside area.

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.

In reaching its determination, the Court discussed the fact that a portion of the property leased to Zion was used as a parking lot. In American National Bank, the Court noted that "without a doubt, the portions of the plaintiff's property used as a parking lot are not exempt from taxation." The Court added that the section of the Property Tax Code which exempts parking areas "contains the explicit requirement that the religious organization actually own the parking lot." *Id.* at 723. This discussion in American National Bank offers further reasons for denying the exemption of the parking area located on the Omega property as the parking area is not owned by Omega.

Finally, 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 strikingly 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 Victory 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 private individual, not exempt from taxes, and the property is used with a view to profit. In Victory 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 strongly supports affirming the denial of the exemption for the Omega property for the 2013 assessment year.

WHEREFORE, for the reasons stated above, it is recommended that the Department’s determination which denied the exemption from 2013 real estate taxes should be affirmed and Cook County Parcels, identified by P.I.N.S 20-03-318-005, 006, 007 and 008, should not be exempt from property taxes in 2013.

May 4, 2016

Kenneth J. Galvin  
Administrative Law Judge