

PT 12-13
Tax Type: Property Tax
Tax Issue: Religious Ownership/Use

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

CITY FIRST FOUNDATION,

APPLICANT

v.

THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS

No. 11-PT-0050 (10-16-488)

Real Estate Tax Exemption
For 2010 Tax Year
P.I.N. 13-14-329-026-0000

Cook County Parcel

Kenneth J. Galvin
Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Reverend Phillip Hilliard, *pro se*, on behalf of City First Foundation; Mr. John Alshuler, Special Assistant Attorney General, on behalf of the Department of Revenue of the State of Illinois.

SYNOPSIS:

This proceeding raises the issue of whether the “first and second floors of 4011 N. Avers,” located on Cook County P.I.N. 13-14-329-026-0000 (hereinafter the “subject property”), qualify for exemption from 2010 real estate taxes under 35 ILCS 200/15-40, which exempts “[a]ll property used exclusively for religious purposes.”

The controversy arose as follows: On February 8, 2011, City First Foundation (hereinafter “City First”) filed a Real Estate Exemption Complaint for the subject property with the Board of Review of Cook County (hereinafter the “Board”). The Board

reviewed the applicant's Complaint and subsequently recommended to the Illinois Department of Revenue (hereinafter the "Department") that the exemption be denied. On September 22, 2011, the Department rejected the Board's recommendation finding that P.I.N. 13-14-329-026-0000 was exempt for 100% of the 2010 assessment year "except for the first and second floor of 4011 N. Avers and a proportionate amount of land, which is taxable (property not in exempt use)." Dept. Ex. No. 1.

On November 12, 2011, the Applicant filed a timely request for a hearing as to the denial of the exemption for the first and second floor and presented evidence at a formal evidentiary hearing on July 20, 2012, with testimony from Reverend Mark Johnson, Executive Director of City First, Eunice Hulth, Board Member and Assistant Treasurer of City First, Roger Johnson, Former Board Member of City First and Chris Langkamp and Joel Shaffer, Board Members of City First. Following a careful review of the record, including the transcript and evidence admitted at the hearing, it is recommended that the first and second floor on the subject property be denied an exemption for the 2010 tax year.

FINDINGS OF FACT:

1. Dept. Ex. No. 1 establishes the Department's jurisdiction over this matter and its position that the first and second floor of 4011 North Avers was not in exempt use in 2010. Tr. pp. 7-8; Dept. Ex. No. 1.
2. City First is not a church. The purposes of City First are to start churches, facilitate churches as they grow and to develop and strengthen church leadership. Tr. pp. 12-14.

3. P.I.N. 13-14-329-026-0000 consists of a church and an apartment building. The church and the third floor of the apartment building were found to be exempt. The first and second floors of the apartment building are at issue in these proceedings. Tr. pp. 15-21.
4. Young Nak Korean Presbyterian Church and Tapestry Fellowship Church rent the church structure on P.I.N. 13-14-329-026-0000 from City First. Tr. pp. 19-20, 29-30.
5. A schematic diagram of the first floor shows two storage spaces that are used by City First and one of the renting Churches for cleaning supplies and storage, a pastor's bedroom and study, a kitchen, a bathroom, a meeting room used for worship team meetings, discipleship and evangelism, a living room area and a music room/guest room. The first floor also contains a "fellowship exercise" area containing exercise equipment, which was donated to City First. Church members and their friends use the exercise room for "friendship-recreation." Tr. pp. 23-24, 26, 39-40; App. Ex. No. 2.
6. A schematic diagram of the second floor shows a retreat meeting room, a "dining area and retreat meeting room," kitchen, bathroom, a "meeting room-Christian education," and three rooms for bunk beds for guests. Tr. pp. 24-25; App. Ex. No. 2.
7. Thirteen groups used the guest rooms in 2010, including the "Seminary Consortium of Urban Pastoral Education," "Men's Retreat," "Urban Transformation Ministries from Grand Rapids, Michigan," "Central Baptist

Church Youth Group,” and “African Reunion Group.” These groups compensated City First for use of the rooms. Tr. pp. 27-28; App. Ex. No. 3.

CONCLUSIONS OF LAW:

An examination of the record establishes that City First has not demonstrated, by the presentation of testimony, exhibits and argument, evidence sufficient to warrant exempting the first and second floors of the subject property from property taxes for tax year 2010. 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 (1st Dist. 1983).

Pursuant to its Constitutional mandate, the General Assembly enacted the Property Tax Code, 35 ILCS 200/1-3 *et seq.* The provisions of that statute which govern the disposition of the instant proceeding are found in Section 200/15-40. Section 200/15-40(a) exempts property used exclusively for religious purposes as long as it is not used with a view to profit. Section 15-40(b) exempts property that is owned by churches, religious institutions or religious denominations and that is used in conjunction therewith as housing facilities provided for ministers (including bishops, district superintendents, and similar church officials whose ministerial duties are not limited to a single congregation), their spouses, children and domestic workers, performing the duties of their vocation as ministers at such churches or religious institutions or for such religious denominations, including the convents and monasteries where persons engaged in religious activities reside. “A parsonage, convent or monastery or other housing facility shall be considered under this Section to be exclusively used for religious purposes when persons who perform religious related activities shall, as a condition of their employment or association, reside in the facility.” 35 ILCS 200/15-40.

The above statute allows an exemption for property used exclusively for religious purposes. Benedictine Sisters of the Sacred Heart v. Department of Revenue, 155 Ill. App. 3d 325, 329 (2d Dist. 1987). “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). The first and second floors located on the subject property have several different uses and City First did not indicate in the record what the “primary use” of this

property was in 2010.¹ The first floor is labeled in the schematic diagram as “Tapestry Annex and Parsonage” and the second floor is labeled “Tapestry Annex and Guest House.” One room is delineated on the first floor as the “Pastor’s bedroom and study” and four rooms on the first and second floors are delineated as “guest rooms,” so I will begin with a consideration of whether the use of the property for housing purposes, as a parsonage and guest house, provides a reason to exempt the property.

35 ILCS 200/15-40(b): Housing facilities are exempt from property taxes if: (1) they are “owned by churches or religious institutions or denominations”; and (2) they are used as “housing facilities provided for ministers” and (3) such ministers reside in the facility “as a condition of employment.” 35 ILCS 200/15-40. I am not able to conclude that any of these conditions is met by City First.

In order to qualify for exemption, housing facilities must be owned by a church, religious institution or denomination. It is clear from the record that City First is not a church. Reverend Johnson was asked if City First is a church and he replied “no.” City First helps “facilitate churches as they grow.” Tr. pp. 12-13. City First would have to qualify as a “religious institution or denomination” to receive an exemption under subsection (b).

I am unable to conclude from the record that City First is a religious institution or denomination. No corporate documents were offered into evidence for City First. The record does not contain articles of incorporation, bylaws, rules and regulations, operating

¹ Reverend Mark Johnson testified that he had pictures of the storage areas on the subject property. No pictures or other documentary evidence proving that areas were used for storage were admitted into evidence. Storage appears from the schematic diagram to be an incidental use of the subject property and, accordingly, does not provide a basis for exemption of the first and second floors.

manuals, Board minutes, affidavits or a Section 501(c)(3) letter.² Without documentary evidence, I am unable to conclude that City First is a religious institution or religious denomination.

Assuming, *arguendo*, that City First is a religious institution or religious denomination, it must be noted that 35 ILCS 200/15-40 has the following requirements for exemption. If a housing facility is owned by a “religious institution,” the minister must be performing the duties of his vocation at such church or at such religious institution in order for the property to qualify for exemption under subsection (b). If a housing facility is owned by a “religious denomination,” the minister must be performing the duties of his vocation “for such religious denomination” in order for the property to qualify for exemption under subsection (b).

There is no testimony in the record that a “minister” resided on the subject property in 2010. Reverend Johnson testified that “we had a pastor in 2002 named [...] who stayed in this facility.” Tr. p. 22. I cannot recommend an exemption for 2010 based on the testimony that a pastor lived there in 2002. The guest rooms with bunk beds on the subject property were rented by thirteen groups in 2010, including the “Seminary Consortium of Urban Pastoral Education,” “Men’s Retreat,” “Urban Transformation Ministries from Grand Rapids, Michigan,” “Central Baptist Church Youth Group,” and “African Reunion Group.” Tr. pp. 27-28; App. Ex. No. 3.

Roger Johnson testified that the wife of a Swiss family stayed on the subject property in January, 2010, “to study in our urban studies program.” Tr. p. 48. Chris Langkamp testified that he housed six children on the subject property in June, 2010, who

² There was testimony at the hearing that City First is a Section 501(c)(3) “religious organization.” Tr. pp. 11-12.

were performing a “work project” for Austin Corinthian Church. Tr. pp. 54-55. Joel Shaffer testified that in 2010, on two different occasions, he brought “a group of teenagers and young adults” who stayed on the subject property while attending a conference called “Reload.” Tr. pp. 57-58. The groups who rented the guest rooms on the subject property are not ministers. It is clear from the testimony that the subject property did not house a “minister” in 2010, and that no “minister” was required to live on the subject property as a condition of his or her employment, as required by 35 ILCS 200-15-40(b). For these reasons, I cannot recommend an exemption under subsection (b) of this statute.

Since the subject property does not qualify for exemption under 35 ILCS 200/15-40(b), the only other consideration here is whether the first and second floors on the subject property were exempt for religious purposes in 2010 under 35 ILCS 200/15-40(a). Under subsection (a), 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.

I conclude from the testimony and the evidence that the first and second floors were used with a view to profit in 2010. Ms. Hulth was asked “[I]n 2010, how much income was derived from income associated with housing?” She replied “Probably about, roughly \$20,000.” She was also asked if she had “any idea” how much City First incurred in expenses for the “apartment building located on the campus.” She replied “Probably \$5,000.” She testified that City First’s annual reports are audited and that a IRS Form 990 is prepared. Tr. p. 37. The audited annual reports and the Form 990 were not offered into evidence by City First. The Department caused to be admitted into evidence an unaudited income statement showing that City First earned \$3,355 in income

from use of the guest rooms in 2010. Urban Transformation Ministries was charged \$90 (August 2, 2010), the lowest amount charged. Bethel University was charged \$515 (January 14 to 16, 2010), the highest amount charged. Dept. Ex. No. 3.

Mr. Roger Johnson testified that the “compensation” he paid “for the use of the building” was not “mandatory.” It was a “donation” and “it was very reasonable.” Tr. pp. 48-49. Mr. Langkamp testified that he housed two groups on the subject property in 2010.³ He made a “very small donation to cover costs.” The compensation was “reasonable.” “You can’t find it that low anywhere.” Tr. p. 56. Mr. Joel Shaffer also housed two groups on the subject property in 2010. He paid “very low compensation.” “For the second conference, we could have stayed at Moody Bible Institute, [City First] was three times lower than at Moody.” Tr. pp. 57-58. There was no testimony at the hearing that any group stayed on the property in 2010 without compensating City First. If the boarders signed a contract prior to staying on the subject property, this contract was not offered into evidence. No documentary evidence was admitted to show that the compensation was not mandatory.

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 its 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.” It is immaterial that City First charges “low” or

³ The “compensation” from the two groups Mr. Langkamp housed on the subject property, Archibald United Methodist Church and Three Rivers Church, do not appear on Dept. Ex. No. 3, which shows income from the use of the property of \$3,355. Tr. p. 52.

“reasonable” compensation for use of the subject property. City First is still leasing the property for rent and using the property for profit.

Reverend Mark Johnson testified that the compensation received from the rental of the premises was “only to care for the electric, gas.” Tr. p. 27. No documentary evidence was admitted to support this testimony. This testimony was, in fact, refuted by Ms. Hulth’s testimony that City First’s income associated with housing was “roughly \$20,000,” with expenses of the apartment building being “probably \$5,000,” Tr. p. 37. 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.” So while it is “immaterial” whether City First actually made a profit from its rentals, Ms. Hulth’s testimony is that City First made a \$15,000 profit (\$20,000 in income less \$5,000 in expenses) from its rental. City First’s first and second floors are clearly let for a return and I am forced to conclude from the testimony and the documentary evidence that the first and second floors are used with a view to profit and, accordingly, not entitled to exemption under 35 ILCS 200/15-40(a).

WHEREFORE, for the reasons stated above, it is my recommendation that the first and second floors located in the apartment building on Cook County P.I.N. 13-14-329-026-000 shall not be exempt from 2010 real estate taxes.

Kenneth J. Galvin
Administrative Law Judge

October 9, 2012