

PT 01-7

Tax Type: Property Tax  
Issue: Charitable Ownership/Use

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

INTERCULTURA,  
APPLICANT

v.

ILLINOIS DEPARTMENT  
OF REVENUE

No. 00-PT-0108  
(97-16-1107)

Real Estate Tax Exemption  
for 1997 Assessment Year

Cook County Parcel

P.I.N.:

16-07-417-030

Alan I. Marcus  
Administrative Law Judge

**RECOMMENDATION FOR DISPOSITION**

**APPEARANCE:** Mr. John T. Casey of Thomas M. Tully & Associates on behalf of Intercultura, Inc. (hereinafter the “applicant.”)

**SYNOPSIS:** This proceeding raises the following issues: first, whether applicant has standing to bring a complaint seeking to exempt real estate identified by Cook County Parcel Index Number 16-07-417-000 from 1997 real estate taxes under Section 15-35 of the Property Tax Code, 35 ILCS 200/1-1 *et seq* (hereinafter the “Code”); second, whether a leasehold assessment should be imposed against the subject property pursuant to Section 9-195 of the Code; and third, assuming, *arguendo*, that applicant has such standing, whether applicant’s leasehold interest in the subject property is legally sufficient to satisfy the exempt ownership requirement set forth in Section 15-40. The controversy arises as follows:

Applicant filed a Property Tax Exemption Complaint with the Cook County Board of (Tax) Appeals on June 10, 1999. Dept. Ex. No. 1. The Board reviewed applicant's complaint and recommended to the Illinois Department of Revenue (hereinafter the "Department") that the subject property be exempt as of August 15, 1997. Dept Ex. No. 2. After reviewing the Board's recommendation, the Department issued a determination denying the requested exemption, on grounds that applicant was the lessee, rather than the owner, of the subject property. Dept Ex. No. 3. Applicant thereafter filed a timely appeal as to this denial and subsequently presented evidence at a formal evidentiary hearing. Following submission of all evidence and a careful review of the record, it is recommended that applicant's exemption complaint be dismissed for want of standing.

**FINDINGS OF FACT:**

1. The Department's jurisdiction over this matter and its position therein are established by the determination issued by the Office of Local Government Services on November 12, 1999. Dept. Ex. No. 3.
2. The Department's position in this matter is, for present purposes, as follows:

Applicant is not the owner of the property, Applicant is the lessee of the property. No leasehold assessment has been made for the assessment year for which application has been made.

Dept. Ex. No. 3. [sic].

3. Applicant is an Illinois not-for-profit corporation organized for purposes of operating a Montessori pre-school. Applicant Ex. Nos. 9, 10.

4. The Society of St. Pious X (hereinafter the “Society”) is an Illinois not-for-profit corporation devoted to promulgating the Catholic faith through operation of parochial schools. Applicant Ex. Nos. 1, 2.
5. The Society obtained ownership of the subject property, which is located at 301 S. Ridgeland, Oak Park, IL, by means of a trustee’s deed dated August 14, 1996. Tr. pp. 19-22; Dept. Ex. No. 2; Applicant Ex. No. 5.
6. The Society used the subject property as a parochial school for approximately one year from the date of purchase. Tr. pp. 19-22.
7. The Society maintained its ownership interest in the subject property throughout the 1997 assessment year. It did, however, demise the subject property to applicant pursuant to the terms of a lease dated July 25, 1997. Applicant Ex. Nos. 5, 6.
8. The lease provides, *inter alia*, that: (1) the term of the lease shall run from August 15, 1997 through August 14, 1999; (2) applicant shall pay the Society various sums certain as rental throughout the term of the lease; (3) applicant shall pay such sums on a monthly basis; and, (4) applicant shall use the leasehold for no purpose other than operating a Montessori school. Applicant Ex. No. 6.
9. The lease is silent as to whether applicant or the Society is obligated to pay real estate taxes. *Id.*
10. The Society’s financial statements fail to disclose that the Society paid any 1997 real estate taxes on the subject property. Applicant Ex. Nos. 7, 8.

**CONCLUSIONS OF LAW:**

An examination of the record establishes that this applicant lacks standing to bring a complaint seeking to exempt the subject property from 1997 real estate taxes

under Section 15-35 of the Property Tax Code, 35 **ILCS** 200/1-1, *et seq*; 35 **ILCS** 2005-35. In support thereof, I make the following conclusions:

A. Standing and Related Issues

The issue of standing rarely arises in exemption cases because the property owner, which is liable for real estate taxes under Section 9-175 of the Property Tax Code,<sup>1</sup> is also the applicant in most cases. Because Section 9-175 imposes this liability, the owner's standing is not questioned, as the owner 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 (2nd Dist. 1991).

In this case, however, the entity which owns the subject property is *not* the applicant herein. That owning entity, the Society, is an Illinois not-for-profit corporation that is separately incorporated from the entity which *is* the applicant herein, Intercultura. As such, the Society enjoys a legal identity that is separate and distinct from that of the applicant. Consequently, only the Society, and *not* Intercultura, can benefit from the statutory grant of standing contained in Section 9-175.

Applicant sought to avoid this conclusion by making an on-the-record motion to amend the application to reflect that the Society is both the property owner and the applicant herein. Tr. p.47. I denied that motion on grounds that neither the Property Tax Code nor the applicable Departmental Hearing Regulations authorizes me to allow such an amendment. *Id.*

The Property Tax Code establishes the following administrative procedures for review of exemption complaints: first, "[a]ny person wishing to claim an exemption for

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1. Section 9-175 of the Property Tax Code states, in pertinent part, that "[t]he owner of property on January 1 in any year shall be liable for the taxes of that year...[.]" (35 **ILCS** 200/9-175).

the first time ... shall file an application with the county board of review or board of appeals, following the procedures of Section 16-70 or 16-130 [of the Code]" (35 ILCS 200/15-50); second, the "board of review shall hear and determine the complaint of any person who is assessed on property claimed to be exempt" (35 ILCS 200/16-70); third, the clerk of the board of review shall, under the direction of the board, make out and forward to the Department "a full and complete statement of facts in the case" (*id.*); fourth, the Department shall then determine, from the facts presented by the board, whether the property is legally liable to taxation (*id.*; 35 ILCS 200/16-130); and fifth, the Department shall afford a hearing to any party aggrieved by its determination, provided that such party files a request for hearing within 20 days of the date of the Department's determination (35 ILCS 200/8-35).

Here, the Society did not file an appropriate exemption complaint with the Board. Nor did the Society seek any determination that its use of the subject property qualified as exempt *prior to* making its on-the-record motion at hearing. Thus, that motion is, in effect, an attempt to elude the mandated statutory review process described above. However, there is currently no statutory or regulatory authority that allows me to permit such circumvention. Accordingly, the motion to amend is hereby denied and all subsequent analysis shall focus on whether Intercultura, the applicant, lacks standing to bring the instant exemption complaint.

I have previously noted that applicant cannot benefit from the statutory grant of standing contained in Section 9-175 because it does not own the subject property. Consequently, it appears that applicant can obtain the requisite financial stake in the outcome herein (Highland Park Women's Club v. Department of Revenue, *supra.*) 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 1997 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.

The lease under which applicant obtained its interest in the subject property does not contain any provision that specifically obligates applicant to pay real estate taxes. Nor does it contain any other language indicating whether applicant or its lessor, the Society, is legally responsible for paying same. Absent such language, Section 9-175 of the Property Tax Code imposes that liability on the Society. However, the Society is not the applicant in this case. Thus, the Society's statutory liability for 1997 real estate taxes is irrelevant to this proceeding for the reasons set forth above.

Furthermore, according to Intercultura's financial statements (Applicant Ex. Nos. 11, 12) Intercultura did not pay any 1997 real estate taxes on the subject property. For this reason, and because the applicant did not assume any contractual liability for 1997 real estate taxes, the only means by which applicant can acquire standing herein is through imposition of a leasehold assessment. In this matter, however, a leasehold assessment is not proper.

The statute that governs imposition of leasehold assessments is found in Section 9-195 of the Property Tax Code, which states as follows:

Except as provided in Section 15-55 [which governs exemption of property owned by the State of Illinois], when property which is exempt from taxation is leased to another whose property is *not exempt*, and the leasing of which *does not make the property taxable*, the leasehold estate and the appurtenances shall be listed as the property of the lessee thereof, or his or her assignee. Taxes on that property shall be collected in the same manner as property that is not exempt, and *the lessee shall be liable for those taxes*.

35 ILCS 200/9-195. [Emphasis added].

The literal language of Section 9-195 may be reduced to mean that leasehold assessments can be imposed if and only if: (1) property belonging to an otherwise exempt lessor; (2) is leased to a non-exempt lessee; (3) under circumstances wherein leasing the demised property does *not* render that property subject to taxation. 35 ILCS 200/9-195; Metropolitan Water Reclamation District of Greater Chicago v. Department of Revenue, 313 Ill. App.3d 469 (1<sup>st</sup> Dist., May 1, 2000).

Here, there is no question that the owner/lessor, a religious order, qualifies for exempt status under Section 15-40 of the Code.<sup>2</sup> Thus, the first condition for imposition of a leasehold assessment is satisfied herein. However, the second and third conditions are not. The second is not satisfied for a simple reason, that being because the applicant/lessee's status as a tax-exempt "school"<sup>3</sup> violates the statutory requirement that

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2. Section 15-40 of the Property Tax Code provides, in relevant part, for the exemption of "[a]ll property used exclusively for religious purposes ... [.] 35 ILCS 200/15-40.

3. Section 15-35(b) of the Property Tax Code provides for the exemption of "property of schools on which the schools are located and any other property of schools used by the schools exclusively for school purposes. 35 ILCS 200/15-35(b).

the property be leased “to another whose property is *not* exempt.” 35 **ILCS** 200/9-195. (Emphasis added).

The third requirement, which states that “leasing ... does *not* make the property taxable,” requires a more complex explanation. 35 **ILCS** 200/9-195 (emphasis added). Property that is exempt by use alone, or by ownership and use, *is* subject to taxation when leased because the pertinent statutes specifically bar exemption when the property is “leased or otherwise used with a view to profit.” See 35 **ILCS** 200/15-35;<sup>4</sup> 35 **ILCS** 200/15-40;<sup>5</sup> 35 **ILCS** 200/15-65.<sup>6</sup> See also, People ex. rel. Baldwin v. Jessamine Withers Home, 312 Ill. 136, 140 (1924); Salvation Army v. Department of Revenue, 170 Ill. App.3d 336, 344 (2nd Dist. 1988) (holding that real estate that is used for the purpose of producing income for its owner is let for profit, and therefore not in exempt use, even if the owner applies all of income derived from the rental enterprise to further an otherwise exempt objective).

In contrast, property that is exempt solely by virtue of its ownership is *not* taxable when leased because such property is exempt regardless of use, and therefore, not subject to the types of use restrictions described above. Thus, technically speaking, such property will remain exempt even if it is leased or otherwise used with a view to profit.

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4. Section 15-35 of the Property Tax Code states, in relevant part, that “.. all property of schools, not sold or leased or otherwise used with a view to profit, is exempt” from real estate taxation. 35 **ILCS** 200/15-35.

5. Section 15-40 of the Property Tax Code provides, in relevant part, that “[a]ll property used exclusively for religious purposes ... [which is] not leased or otherwise used with a view to profit, is exempt” from real estate taxes. 35 **ILCS** 200/15-40.

6. Section 15-65 states, in substance, that all property owned by “institutions of public charity” is exempt from real estate taxation, provided that: (1) such property is “actually and exclusively used for charitable or beneficent purposes[;]” and, (2) such property is “not leased or otherwise used with a view to profit.” 35 **ILCS** 200/15-65, 15-65(a).



A leasehold assessment is therefore required in order to prevent the non-exempt lessee from receiving the benefit of a tax exemption to which it is not lawfully entitled.

A leasehold assessment is not, however, applicable to property that is exempt by use alone or ownership and use. Such properties *are* subject to the aforementioned statutory use restrictions. Hence, these properties *are* taxable as a matter of law when leased. This being the case, Section 9-175 of the Property Tax Code ensures that the owner/lessor will be liable for any taxes on that leased property as a matter of law. Therefore, it is not necessary to shift that liability to the lessee by operation of the leasehold assessment statute.

Here, the owner/lessor is a religious order whose exemption arises under Section 15-40 of the Code. This provision states, in relevant part that “[a]ll property *used* exclusively for religious purposes ... [which is] not leased or otherwise used with a view to profit, is exempt” from real estate taxes. 35 **ILCS** 200/15-40 (emphasis added). Because this exemption rests solely on use, leasing does in fact make the subject property taxable for the reasons set forth above. *See, People ex. rel. Baldwin v. Jessamine Withers Home, supra; Salvation Army v. Department of Revenue, supra.* Therefore, a leasehold assessment cannot be imposed against applicant’s interest in that property. As such, applicant cannot acquire standing herein via imposition of such an assessment.

Based on the foregoing, I conclude that applicant lacks standing to bring the instant exemption complaint. Hence, applicant’s complaint is, in effect, a request for declaratory judgment.<sup>7</sup> The Property Tax Code does not contain any provision that

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7. The complaint has this effect because it is legally impossible for applicant to be liable for real estate taxes, under Section 9-175 of the Property Tax Code, unless applicant is determined to be the “owner” of the subject property. However, applicant neither actually paid, nor incurred any contractual liability for, real estate taxes on that property during 1997. Consequently, it is factually and legally

specifically authorizes the Department to issue declaratory judgments. *See*, 35 **ILCS** 200/8-5 through 200/8-55. Nor do the applicable Departmental Hearing Regulations contain such a provision. *See*, 86 Ill. Admin. Code, ch. I, §§ 200.101 through 200.225. Accordingly, I lack authority to grant the relief applicant seeks. For this and all the aforementioned reasons, I recommend that the instant exemption complaint be dismissed for want of standing.

B. Final Considerations

In the interest of administrative economy, I briefly note that applicant would not be entitled to an exemption under the pertinent statute even if it did not lack standing to bring the instant complaint. That statute, found in Section 15-65(b) of the Property Tax Code, exempts “property *of* schools on which the schools are located and any other property of schools used by the schools exclusively for school purposes. 35 **ILCS** 200/15-35(b) (emphasis added).

The preposition "of," which appears in Section 15-35(b), connotes an ownership requirement. *Accord*, Methodist Old People's Home v. Korzen, 39 Ill.2d 149 (1968). Applicant’s leasehold interest in the subject property clearly does not satisfy this requirement. Furthermore, the use language contained within Section 15-35(b) mandates that the owner’s use must be “exclusively<sup>8</sup> for school purposes.” In this case, the Society, which owned the subject property throughout 1997, was not using the subject property

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impossible for the exemption that applicant seeks herein to operate as anything but a declaration absolving applicant of a liability that it did not incur.

8. The word “exclusively” when used in Section 200/15-35(b) and other property tax exemption statutes means the “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 (4th Dist. 1993).

for school-related purposes while the leasehold was in effect. Rather, the Society was using said property to produce income for itself throughout that time.

I have previously cited to the well-settled principle that properties used for such purposes are not in exempt use as a matter of law. People ex. rel. Baldwin v. Jessamine Withers Home, *supra*; Salvation Army v. Department of Revenue, *supra*. Accordingly, the subject property was neither in exempt ownership, nor in exempt use, as required by Section 15-65(b) for the reasons set forth above. Consequently, said property does not qualify for exemption from 1997 real estate taxes under that provision notwithstanding any of the standing issues raised above. Accordingly, I recommend that the Department's determination in this matter be affirmed.

WHEREFORE, for all the above-stated reasons, it is my recommendation that the real estate identified by Cook County Parcel Index Number 16-07-417-030 not be exempt from 1997 real estate taxes.

02/14/01  
Date

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Alan I. Marcus  
Administrative Law Judge