

**PT 06-15**  
**Tax Type: Property Tax**  
**Issue: Educational Ownership/Use**

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

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**LOYOLA UNIVERSITY OF CHICAGO,**

**Applicant**

**v.**

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

**Docket No: 04-PT-0064**

**Real Estate Tax Exemption**

**For 2003 Tax Year**  
**P.I.N.S 17-03-223-002, 003**

**Cook County Parcels**

**Kenneth J. Galvin**  
**Administrative Law Judge**

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**RECOMMENDATION FOR DISPOSITION**

**APPEARANCES:** Mr. Gregory Lafakis, Liston & Lafakis, PC, on behalf of Loyola University of Chicago; 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 Cook County Parcels identified by Property Index Numbers 17-03-223-002 and 003 (hereinafter the “subject property”) qualify for exemption from 2003 real estate taxes under 35 ILCS 200/15-35, in which “all property of schools, not sold or leased or otherwise used with a view to profit” is exempted from real estate taxation.

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The controversy arises as follows: On April 19, 2004, Loyola University of Chicago (hereinafter “Loyola”) filed a Real Estate Exemption Complaint for the subject property with the Board of Review of Cook County (hereinafter the “Board”). The Board reviewed Loyola’s complaint and subsequently recommended to the Illinois Department of Revenue (hereinafter the “Department”) that the requested exemption be denied. Dept. Ex. No. 1.

The Department accepted the Board’s recommendation in a determination dated August 19, 2004. This determination found that the subject property was not in exempt use in 2003. Dept. Ex. No. 1. On October 13, 2004, Loyola filed a request for a hearing as to the denial and presented evidence at a formal evidentiary hearing on September 21, 2005, with Timothy McGuriman, Loyola’s Associate Vice-President for Business Services, presenting oral testimony. Following submission of all evidence and a careful review of the record, it is recommended that the Department’s determination 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 use in 2003. Tr. pp. 8-9; Dept. Ex. No. 1.
2. The subject property is located at 845-847 North State Street in Chicago. Loyola acquired the subject property by special warranty deed dated May 30, 2003. The subject property is occupied by the “Loyola University Chicago Bookstore.” Tr. pp. 12-14; App. Ex. Nos. 1 and 2.
3. The bookstore sells Loyola emblematic clothing including sweat shirts and tee-shirts, textbooks, course material, general reference books which may be requested by

students for their classes but are not required reading, casual reading material, magazines, school supplies, beverages and snacks. The bookstore is open to the public. Tr. pp. 15-17, 23, 41, 42; App. Ex. No. 5.

4. The bookstore on the subject property and other Loyola bookstores, are managed by “Barnes & Noble College Bookstores, Inc.” (hereinafter “Barnes”) under the terms of a “Bookstore Services Agreement” dated October 2, 1999 and an undated “Amendment to the Contract between Loyola University and Barnes & Noble College Bookstores.” Tr. pp. 19-23; App. Ex. Nos. 3 and 4.
5. Under the Agreement, Loyola pays for water, heat, electricity and air conditioning used on the subject property. Loyola is responsible for all structural repairs to the building on the subject property and Loyola can access the property at any time. Tr. pp. 24-25; App. Ex. No. 3.
6. Barnes maintains a schedule of operating hours including extended hours in accordance with Loyola’s school calendar. The Agreement states that the operating hours of the bookstore shall be mutually agreed to by both Loyola and Barnes to meet the needs of the students, faculty and staff and the hours can be changed only upon written approval of Loyola. Tr. p. 25; App. Ex. No. 3.
7. Barnes is responsible for hiring and firing the staff of the bookstore and the staff is employed by Barnes. Loyola can request the removal of any personnel and Barnes “shall remove said personnel immediately.” Barnes hires Loyola students “whenever reasonably possible.” Tr. pp. 25-26, 49-50; App. Ex. Nos. 3 and 6.
8. The Agreement requires Barnes to stock all required, recommended and suggested course materials and tools, books including textbooks, reference books, software,

disks, diagnostic instruments, lab coats, notebooks, stationary, desk and room accessories as needed by Loyola students, staff or faculty. Barnes must stock Loyola emblematic merchandise that has been properly authorized by Loyola's exclusive Agency Agreement with The Collegiate Licensing Company. Barnes has the right to sell non-teaching supplies such as gifts, class and alumni rings, greeting cards, sundries and casual reading materials. Barnes also maintains an on-line ordering website, with the system design and content "supervised by appropriate Loyola personnel." Tr. pp. 26-28, 30-31; App. Ex. No. 3.

9. Loyola retains the exclusive right to require Barnes to add any product or service or to remove any product or service for any reason without recourse by Barnes. App. Ex. No. 3.
10. Barnes provides discounts on certain items to Loyola faculty, staff, departments, offices and athletes, and offers discounts to retirees and alumni on emblematic merchandise. Tr. p. 30; App. Ex. No. 3.
11. Barnes advertises at its own expense and may place signs near the bookstore. All signage must be approved in writing by Loyola. There is no signage to indicate that the bookstore is operated by Barnes. Tr. pp. 37, 42; App. Ex. No. 3.
12. The Amendment to the Bookstore Services Agreement allows Barnes to price course packs and textbooks for sale up to 30% above what the publisher has charged as the cost of the item. The Amendment requires Barnes to pay Loyola a commission of 9.5% on all gross sales up to \$3,500,000, 10.5% on all gross sales \$3,500,000 to \$7,000,000 and 12.5% on all gross sales over \$7,000,000. Gross sales are defined as collected sales less voids, refunds, sales tax, and "discounted sales such as department

sales, discounted faculty/staff sales, pass-through income, etc.” Barnes must also pay “one time milestone payments” of \$50,000 when sales first exceed thresholds of \$5,750,000, \$6,500,000, and \$7,250,000. Tr. pp. 36-37; App. Ex. No. 3.

**CONCLUSIONS OF LAW:**

An examination of the record establishes that Loyola has not demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exempting the subject property from 2003 real estate taxes. Accordingly, under the reasoning given below, the determination by the Department that the subject property does not qualify for exemption should be affirmed. 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). In accordance with its constitutional authority, the General Assembly enacted Section 15-35 of the Property Tax Code which exempts “all property of schools, not sold or leased or otherwise used with a view to profit.” 35 ILCS 200/15-35.

The Department’s August 19, 2004, determination denying the instant exemption request was based solely on the Department’s conclusion that the subject property was not in exempt use in 2003. Because the Department denied the exemption solely on lack of exempt use, it is implicit that the Department determined that Loyola owned the subject property and qualified as a “school.” These conclusions were unchallenged in the instant proceeding: The subject property is located at 845-847 North State Street in Chicago. Loyola acquired the subject property by special warranty deed dated May 30, 2003. Tr. pp. 12-14; App. Ex. Nos. 1 and 2. Accordingly, the only real issue is whether the subject property was actually and exclusively used for exempt purposes in 2003.

Mr. McGuriman testified that the bookstore on the subject property officially opened in December of 2003. Tr. p. 23. There was no testimony at the hearing as to what date in December of 2003 the bookstore opened. Loyola’s PTAX-300, “Application for Non-homestead Property Tax Exemption” states that the subject property was “under commercial lease-back to prior owner until November 1, 2003.” Dept. Ex. No. 1. The prior owner of the subject property was a hardware store. Tr. p. 63. Initially, Mr. McGuriman testified that Loyola “took [the] period of time between May of 03 and December to get the store ready to be the bookstore’s temporary location.” Mr. McGuriman was then asked: “So from the point where it was purchased until the

bookstore actually opened its operation, it was being put into shape to be the bookstore?” He responded “Correct.” Tr. pp. 41-42. This testimony is at odds with the PTAX-300, which states that the property was leased back to the hardware store until November 1, 2003.

Later, in an attempt to clarify the dates involved, Mr. McGuriman testified that Loyola actually took possession of the property and began to convert it to a bookstore on October 1, 2003. Mr. McGuriman was then asked “[S]o the prior owner had possession up until October 1<sup>st</sup> and then the University took possession of the entire property?” He responded: “Right.” Tr. pp. 63-64. This testimony is again at odds with Loyola’s PTAX-300 which states that the property was leased back to the hardware store until November 1, 2003. No explanation was offered for this discrepancy. Loyola is seeking a property tax exemption for 2003. Property tax exemptions begin on a specific date. Mr. McGuriman’s testimony is in conflict with Loyola’s PTAX-300. I am unable to determine from the testimony when Loyola began converting the subject property to a bookstore and on what date in December, 2003, the bookstore actually opened.

The “Bookstore Services Agreement” between Loyola and Barnes, “entered into as of October 2, 1999,” states in Article 1 that Barnes shall operate four bookstores as follows: (1) One location in Lewis Towers at Loyola’s Water Tower Campus; (2) One location in the Granada Center at Loyola’s Lake Shore Campus; (3) One location in the Gentile Center at Loyola’s Lake Shore Campus for sales of emblematic merchandise; (4) One location at Loyola’s Mallinckrodt Campus in Wilmette. App. Ex. No. 3. Loyola no longer has the Mallinckrodt Campus in Wilmette and that bookstore no longer exists. Tr. p. 48. The Amendment to the Bookstore Services Agreement is not dated. App. Ex. No.

4. According to Mr. McGuriman, the Amendment covers the subject property and one other Loyola bookstore. Tr. p. 22.

Loyola admitted into evidence an “Operating Profit and Loss Statement” for “Barnes and Noble College Bookstores, Inc.,” subtitled “Loyola Rollup,” covering all of Loyola’s bookstores, with a date written as “05-Apr-04.” App. Ex. No. 7. There was no testimony, and it is unclear, whether the date on the statement should be read as April 4, 2005 or April 5, 2004. There was no explanation offered as to what is meant by a “Rollup.” The Profit and Loss Statement shows four years of “Income from Operations.” The years are listed in columns as “FY” ‘00 through ‘03. Mr. McGuriman was asked on direct examination what the document “show[ed] us ... ”

A. It shows that over the period of time that they were operating these stores from fiscal year 2003, that they had a loss of operating – a net loss in operation.

Q. Fiscal year, does that relate to calendar year?

A. No. Our fiscal year is June – closes on June 30<sup>th</sup>.  
It’s July 1 to June 30.

Q. And Barnes and Noble’s?

A. Their fiscal year as a company I believe is different than ours, but we record on our fiscal year our operations.

Q. So these fiscal years relate to Loyola’s fiscal year?

A. Correct. And these were the losses.

Q. It would be June ‘03 to June ‘04?

A. July 1, ‘03.

Q. To June 30?

A. Of ‘04. That would be the ‘04 fiscal year.

Tr. pp. 55-56.

There is no ‘04 fiscal year on the Profit and Loss Statement. The last fiscal year on the statement is ‘03. If I am interpreting Mr. McGuriman’s testimony regarding fiscal years correctly, the ‘03 fiscal year ended on June 30, 2003. This would be consistent with the Profit and Loss Statement being dated April 5, 2004. The problem with this interpretation is that since the bookstore on the subject property did not open until



sometime in December, 2003, it would not be included in a Profit and Loss Statement with a fiscal year ending June 30, 2003. Although there was no specific testimony on this matter, there was apparently a bookstore operated by Barnes at the Water Tower Campus prior to the opening of the bookstore on the subject property in December, 2003. The '03 fiscal year on the Profit and Loss Statement then contains financial results from the prior bookstore on the Water Tower Campus and the other bookstores covered by the Bookstore Services Agreement. Under these circumstances, the Statement is irrelevant to a determination of the tax-exempt status of the subject property. Without comprehensive financial information specific to the bookstore on the subject property for 2003, I am unable to conclude that the subject property was effectively not "leased or otherwise used with a view to profit" in 2003, as the statute requires.

If the Profit and Loss Statement is dated April 4, 2005, then fiscal year '04, which presumably would have ended on June 30, 2004 and included operations from the bookstore on the subject property, should have been offered into evidence. No explanation for its absence was offered. The Profit and Loss Statement shows a loss from operations from fiscal year '00 through fiscal year '03. The Statement includes several Loyola bookstores and no documentary financial information was offered for individual bookstores including the one on the subject property. There was no testimony at the hearing as to whether some Loyola bookstores earned a profit during the years '00 through '03 and whether some Bookstores incurred a loss, which netted out to the loss from operations shown on the Statement. It must also be noted that if a loss was incurred by the bookstore on the subject property in 2003, this would not be conclusive evidence that the property was not used with a "view to profit" as the statute requires. Because of

the uncertainties regarding the fiscal years and the specific bookstores included in the Profit and Loss Statement, any analysis of the Statement is meaningless. If the Profit and Loss Statement was admitted to show that the subject property is not leased or otherwise used by Loyola with a view to profit, as the statute for educational exemptions requires, it is totally inadequate.

The only other testimony on this point was Mr. McGuriman's statement that in "calendar year 2004," Loyola made \$207,000 in "estimated expenditures" on the subject property and Barnes and Noble paid Loyola "approximately \$199,500" "for this location." Tr. pp. 54-55. No documentary evidence was admitted for the "estimated expenditures" or the "approximate" payments made by Barnes to Loyola in 2004. The exemption being sought is for 2003 and expenditures and payments for 2004 are irrelevant to this determination.

Section 15-35 of the Property Tax Code exempts "all property of schools, not sold or leased or otherwise used with a view to profit." 35 ILCS 200/15-35. If the primary use of the property is for the production of income "with a view to profit," the tax-exempt status is destroyed. Northern Ill. University Foundation v. Sweet, 237 Ill. App. 3d 28 (2d Dist. 1992). There was no testimony at the evidentiary hearing that Barnes was not a "for profit" corporation. Barnes sells a range of products on the subject property including casual reading material, magazines, beverages, bottled water and snacks. The bookstore is open to the public. Tr. pp. 15-16, 41. I presume that Barnes is selling these products to both students and the public at a profit.

The Amendment to the Bookstore Services Agreement allows Barnes to price course packs and textbooks for sale up to 30% above what the publisher has charged as

the cost of the item. Barnes is obviously making a profit on course packs and textbooks sold to students. The Amendment requires Barnes to pay Loyola a commission of 9.5% on all gross sales up to \$3,500,000, 10.5% on all gross sales \$3,500,000 to \$7,000,000 and 12.5% on all gross sales over \$7,000,000. Barnes must also pay “one time milestone payments” of \$50,000 when sales first exceed thresholds of \$5,750,000, \$6,500,000, and \$7,250,000. Tr. pp. 36-37; App. Ex. No. 3. It is clear from the Amendment that the higher Barnes’ gross sales are, the higher is Loyola’s “commission.” It appears from the testimony and the documentary evidence, including the Amendment to the Bookstore Services Agreement, that the primary use of the property is for the production of income for Barnes and Loyola, and the record does not support the conclusion that the subject property is not used with a view to profit.

There was testimony at the hearing that the rear part of the building on the subject property, “which is about 6 to 700 square feet,” or “approximately 700 square feet,” was used by Loyola to store equipment for snow removal, brooms and mops and “things of that nature that are used for general maintenance.” Tr. pp. 17, 45. According to Mr. McGuriman, use of the property for storage began in October, 2003. Tr. p. 64. As discussed previously, Loyola’s PTAX-300 says that the subject property was leased back to its original owner until November 1, 2003. Dept. Ex. No. 1. No documentary evidence was admitted with regard to the use of the property as storage. No plat or diagram was admitted so that the exact square footage of the storage area could be determined. Although use of a property for storage may constitute a qualifying exempt use in some circumstances [Evangelical Hospitals Corporation v. Department of Revenue, 233 Ill. App. 3d 225 (2d Dist. 1991)], this particular record does not allow me to fashion a partial

exemption that accurately reflects either the amount of space Loyola used for storage or the time period that the space for used for storage in 2003.

There was also testimony at the hearing that there is a second floor to the building on the subject property, “which is used currently for construction offices for a residence hall that’s being constructed at the downtown campus, and that’s where the construction offices are located, and they are occupying that space.” This area is “approximately 2,500 square feet of space.” Tr. pp. 17-18. No documentary evidence was admitted with regard to the use of the second floor for construction offices. No plat or diagram was admitted so that the exact square footage of this area could be determined. According to the testimony, the second floor is “currently” used as a construction office, but there was no testimony as to the use of the space in 2003, the year at issue in this case. Accordingly, the record does not support an exemption for the space “currently” used as a construction office on the subject property.

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). The level of proof contained in this record does not satisfy the standard of clear and convincing evidence that applies without exception in property tax cases.

WHEREFORE, for the reasons stated above, it is recommended that the Department's determination which denied the exemption from 2003 real estate taxes on the grounds that the subject property was not in exempt use should be affirmed, and Cook County Parcels 17-03-223-002 and 17-03-223-003 should not be exempt from 2003 real estate taxes.

February 3, 2006

Kenneth J. Galvin  
Administrative Law Judge