PT 18-05
Tax Type: Property Tax
Tax Issue: Charitable Ownership/Use
Religious Ownership/Use

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

THE DEPARTMENT OF REVENUE OF THE STATE OF ILLINOIS v. **INTERNATIONAL OPEN PUBLIC DIGITAL LIBRARY, INC.** **Applicant**	**Docket # 16-PT-011** **Tax Year 2016** **Dept. Docket # 16-10-9**

RECOMMENDATION FOR DISPOSITION

Appearances: Robin Gill, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Sunyoung Jin, *pro se*, for International Open Public Digital Library, Inc.

Synopsis:

International Open Public Digital Library, Inc. ("applicant" or "IOPDL") filed an application for a property tax exemption for the year 2016 for a parcel of property located in Champaign County. The applicant alleges that a portion of the property qualifies for a charitable purposes exemption under section 15-65 of the Property Tax Code (35 ILCS 200/1-1 *et seq*.) on the basis that it is owned by a charitable organization, used exclusively for charitable purposes, and not used with a view to profit. The applicant contends that the remaining portion of the property should be exempt under section 15-40

of the Property Tax Code on the basis that it is used exclusively for religious purposes and not used with a view to profit. In the alternative, the applicant argues that the property should be exempt under section 15-40 because the property is a housing facility for a minister. The Champaign County Board of Review ("County") recommended that the property receive an exemption, and the Department of Revenue ("Department") disagreed with that decision. The Department determined that the property is taxable because it is not owned by a charitable or religious organization or used exclusively for charitable or religious purposes. The applicant timely protested the Department's decision, and an evidentiary hearing was held. After reviewing the record, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. The applicant is an Illinois not-for-profit corporation that was organized on November 12, 2015. (App. Ex. #2, pp. 7-12; Dept. Ex. #1, pp. 11-16)
2. The applicant's purposes, according to its articles of incorporation, are the following:

> The Corporation is organized and operated exclusively for charitable, scientific, and educational purposes that qualify as exempt organizations under Section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future federal tax code.
>
> The Main purpose for which this corporation is organized is to make collections freely accessible to the universal public, by providing a single international digital library platform, and providing the multilingual service.
>
> The Specific purposes for which this corporation is organized and operated include, but are not limited to:
>
> (i) provide a single portal for collections of cooperating libraries for the widest public to access, by improving

interoperability between various metadata standards used by the libraries,

(ii) provide a multilingual service for the linguistic diversity of the public to find, explore, access, and work with the multilingual collections, by improving interoperability between languages,

(iii) enlarge educational opportunities for the public, by developing a life-long learning center,

(iv) improve efficiency and effectiveness in share, access, and (re)use of the world digital infrastructure, by saving cost,

(v) accept donations and contributions of money, property, or digital resources from governments, cooperating libraries, or others, by examining they are exclusively for charitable, scientific, or educational purposes,

(vi) maintain and monitor the use of funds received by the corporation to assure that the funds are used in conformity with the intended purposes, and

(vii) engage in any lawful act or activity under the laws of Illinois State. (App. Ex. #2, pp. 7-8; Dept. Ex. #1, pp. 11-12)

3. Generally speaking, the applicant's goal is to provide a website with free online, multilingual access to high quality digital information from libraries of institutions such as Harvard, MIT, the University of Illinois and the Digital Public Library of America as well as libraries in Europe and Korea. (App. Ex. #2, p. 1; Dept. Ex. #1, pp. 3, 24-30; Tr. pp. 39-40, 52)

4. During 2016, the applicant's activities included researching and developing the tools and technology to make the international online collection available. The applicant is in the process of developing the tool for the main portal for the online library. The applicant's online library was not operational yet in 2016. (App. Ex. #2, p. 1; Dept. Ex. #1, pp. 3, 24-30; Tr. pp. 38-42)

5. The applicant's website is located at www.iopdl.org. (App. Ex. #2, p. 1; Dept. Ex. #1, p. 24)
6. Sunyoung Jin ("Ms. Jin") is the president of the applicant and also one of its directors. (App. Ex. #2, p. 7; Dept. Ex. #1, p. 11: Tr. p. 9)
7. On September 22, 2011, Ms. Jin acquired ownership of the property at issue, and she still owns the property. (App. Ex. #2, pp. 31-32; Dept. Ex. #1, pp. 6-7; Tr. p. 30)
8. A residential home is located on the property. Ms. Jin and her family (her husband, daughter and son) reside there. (App. Ex. #2, p. 5; Dept. Ex. #1, p. 8; Tr. pp. 30-31)
9. The applicant provided a photograph of the outside of the home, but did not provide any photographs of the interior of the home. (App. Ex. #2, p. 5; Dept. Ex. #1, p. 8; Tr. p. 36)
10. Ms. Jin does her work for the applicant on her computer in her home. She is the only person who is developing the tools and technology to operate the library. (Tr. pp. 20, 28, 37)
11. The applicant does not have any employees. Ms. Jin is not compensated for her work. The members of the Board of Directors are not compensated. (App. Ex. #2, p. 34; Dept. Ex. #1, pp. 5, 30; Tr. p. 19)
12. The applicant did not provide a financial statement for the year 2016. Ms. Jin stated that no one has donated money to the organization, and the applicant has no income. (Tr. pp. 41-43)

13. Some people have given money to Ms. Jin to help her pay the mortgage and pay for food. (Tr. p. 41)
14. The applicant applied for a national grant twice and was denied both times. (Tr. p. 49)
15. The applicant has no capital, capital stock, or shareholders. (Dept. Ex. #1, pp. 11-16; App. Ex. #2, pp. 7-12)
16. The applicant is exempt from federal income taxes under section 501(c)(3) of the Internal Revenue Code pursuant to a determination made by the IRS on January 11, 2016. (Dept. Ex. #1, pp. 22-23; App. Ex. #2, pp. 18-19)
17. Ms. Jin's husband, Mr. Han, works at two jobs for 16 hours a day in order to pay for the mortgage on the home and for food. (Tr. pp. 23, 55)
18. Mr. Han is a pastor for God House Church, which is not affiliated with any larger organization. (Tr. pp. 23, 31-32, 43)
19. God House Church is not an applicant in this case. (App. Ex. #2, p. 1; Dept. Ex. #1, p. 3)
20. The applicant did not provide articles of incorporation, bylaws, financial statements, or any documents relating to God House Church.
21. God House Church does not have any income. (Tr. pp. 42-43)
22. The applicant did not provide any indication that the property is zoned for public use as a church.

CONCLUSIONS OF LAW:

It is well-established under Illinois law that taxation is the rule, and tax exemption is the exception. Eden Retirement Center, Inc. v. Department of Revenue, 213 Ill. 2d

273, 285 (2004). "[A]ll property is subject to taxation, unless exempt by statute, in conformity with the constitutional provisions relating thereto." *Id*. Statutes granting tax exemptions must be strictly construed in favor of taxation. *Id*. at 288; Chicago Patrolmen's Association v. Department of Revenue, 171 Ill. 2d 263, 271 (1996); People ex rel. County Collector v. Hopedale Medical Foundation, 46 Ill. 2d 450, 462 (1970). All facts are to be construed and all debatable questions resolved in favor of taxation. Eden Retirement Center, Inc., at 289. Every presumption is against the intention of the State to exempt the property from taxation. Oasis, Midwest Center for Human Potential v. Rosewell, 55 Ill. App. 3d 851, 856 (1st Dist. 1977). Whenever doubt arises, it must be resolved in favor of requiring the tax to be paid. Quad Cities Open, Inc. v. City of Silvis, 208 Ill. 2d 498, 508 (2004).

The burden of proof is on the party who seeks to qualify its property for an exemption. Eden Retirement Center, Inc., *supra*; Chicago Patrolmen's Association, *supra*. "The burden is a very heavy one." Provena Covenant Medical Center v. Department of Revenue, ("Provena I") 236 Ill. 2d 368, 388 (2010); Oasis, Midwest Center for Human Potential, *supra*. The party claiming the exemption bears the burden of proving by clear and convincing evidence that the property in question falls within both the constitutional authorization and the terms of the statute under which the exemption is claimed. Eden Retirement Center, Inc., *supra*; Board of Certified Safety Professionals of the Americas, Inc. v. Johnson, 112 Ill. 2d 542, 547 (1986) (citing Coyne Electrical School v. Paschen, 12 Ill. 2d 387, 390 (1957)).

Charitable Exemption

Authority to grant property tax exemptions emanates from article IX, section 6 of the Illinois Constitution of 1970. Section 6 authorizes the General Assembly to exempt certain property from taxes and provides, in part, 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. Ill. Const. 1970, art. IX, §6.

Pursuant to this constitutional authority, the General Assembly enacted section 15-65 of the Property Tax Code, which allows exemptions for charitable purposes and provides, in relevant part, as follows:

> All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:
>
> (a) Institutions of public charity…. 35 ILCS 200/15-65(a).

Property may be exempt under this subsection if it is (1) owned by an entity that is an institution of public charity; (2) actually and exclusively used for charitable purposes; and (3) not used with a view to profit. *Id.*; Chicago Patrolmen's Association, *supra*. Whether property is actually and exclusively used for charitable purposes depends on the primary use of the property. Methodist Old Peoples Home v. Korzen, 39 Ill. 2d 149, 156-57 (1968). Incidental acts of charity by an organization are not enough to establish that the use of the property is charitable. Morton Temple Association, Inc. v. Department of Revenue, 158 Ill. App. 3d 794, 796 (3rd Dist. 1987).

The Illinois Supreme Court set forth the constitutional standards for a charitable purposes exemption in Methodist Old Peoples Home, *supra*, and reiterated them in Eden Retirement Center, Inc., *supra*, and Provena I, *supra*. The following guidelines are

characteristics of a charitable institution: (1) the organization has no capital, capital stock or shareholders; (2) the organization earns no profits or dividends but rather derives its funds mainly from public and private charity and holds them in trust for the objects and purposes expressed in its charter; (3) the organization dispenses charity to all who need and apply for it; (4) the organization does not provide gain or profit in a private sense to any person connected with it; (5) the organization does not appear to place any obstacles in the way of those who need and would avail themselves of the charitable benefits it dispenses; and (6) the primary purpose for which the property is used, and not any secondary or incidental purpose, must be charitable. Methodist Old Peoples Home, at 156-57. For purposes of applying these criteria, the court defined charity as "a gift to be applied … for the benefit of an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare--or in some way reducing the burdens of government." *Id*. In addition, the Illinois Supreme Court has found that having a charitable exemption from income taxes under section 501(c)(3) is not determinative of whether an applicant is entitled to a charitable exemption from property taxes. Provena I, at 389; Hopedale Medical Foundation, at 464.

One of the requirements for the exemption under section 15-65(a) is that the property be owned by an institution of public charity. One of the reasons why the Department denied the exemption is because it believes that the property is not owned by a charitable organization. The property in this case is owned by Sunyoung Jin; she agreed during the hearing that her name is the only name on the deed as the owner of the property. (Tr. p. 30)

The applicant argues that the property is still entitled to an exemption because IOPDL should be considered to be the owner. Ms. Jin is the president, director, representative, and organizer of IOPDL. Ms. Jin has been one of the primary supporters of both the applicant and God House Church. Ms. Jin said that she tried to donate the property to IOPDL, but IOPDL does not have the funds to accept the offer. (Tr. p. 22) Ms. Jin said that at the time the property was acquired, the bank would not give a mortgage to either the applicant or to God House Church because neither organization has the ability to pay for it.

When determining the property's ownership, legal title alone is not the decisive factor. City of Chicago v. Department of Revenue, 147 Ill. 2d 484, 504-505 (1992). Legal title is considered as one factor, but control of the property and the right to its benefits are more important. *Id*. The concern is with the realities of ownership rather than legal title. Chicago Patrolmen's Association v. Department of Revenue, 171 Ill. 2d 263, 273 (1996).

Courts have looked at the incidents of ownership to determine the real owner of the property. "The primary incidents of ownership include the right to possession, use and enjoyment of the property, the right to change or improve the property, and the right to alienate the property at will." Wheaton College v. Department of Revenue, 155 Ill. App. 3d 945, 946 (2nd Dist. 1987). The right to sublease the property is considered an incident of ownership. *Id*. at 947. Contractual responsibility for real estate taxes is also an incident of ownership, as well as "a substantial monetary interest in the property." Christian Action Ministry v. Department of Local Government Affairs, 74 Ill. 2d 51, 61-62 (1978). In all of the cases where the courts have addressed this issue, a written

contractual obligation existed between the legal title holder and the purported owner that governed the respective property interests of the parties. See *e.g. Id.*; Coles-Cumberland Professional Development Corporation v. Department of Revenue, 284 Ill. App. 3d 351 (4th Dist. 1996); Henderson County Retirement Center, Inc. v. Department of Revenue, 237 Ill. App. 3d 522 (3rd Dist. 1992); Wheaton College v. Department of Revenue, 155 Ill. App. 3d 945 (2nd Dist. 1987); Cole Hospital, Inc. v. Champaign County Board of Review, 113 Ill. App. 3d 96 (4th Dist. 1983).

In the present case, all the incidents of ownership indicate that Ms. Jin is the real owner of the property. She not only is the legal title holder, but she and her family use the property for their personal residence. She has the right to change or improve the property, the right to alienate the property at will, and the right to sublease the property. She is also responsible for the real estate taxes. There is no contractual agreement between Ms. Jin and IOPDL concerning any rights with respect to the property. Other than the fact that Ms. Jin works for the applicant in her home, there is no other connection between the property and IOPDL. Because the applicant has virtually no income, Ms. Jin purchased the property, and the applicant is unable to contribute monetarily to the property. The exemption must, therefore, be denied because the property is not owned by a charitable organization.

Even if IOPDL were the actual owner of the property and not Ms. Jin, the exemption must still be denied because the evidence does not support a finding that a portion of the property is primarily used for charitable purposes. The exemption is determined based on the primary use and not on any secondary or incidental use of the

property. People ex rel. Marsters v. Missionaries, 409 Ill. 370, 375 (1951). It is not possible for property to have more than one primary use.

The applicant contends that a portion of the first floor of the property (which is in what Ms. Jin refers to as "building 2") is used as the office and meeting place for both IOPDL and God House Church. (App. Ex. #1, p. 4; #2, p. 46) Ms. Jin indicated that the 2 rooms on the second floor are expected to be used as offices for IOPDL's employees when IOPDL has the financial resources to pay employees. In the meantime, one of the rooms is sometimes used by Mr. Han as pastor of God House Church, and both of the rooms are sometimes used by homeless people or visitors who have no other place to stay. The rooms are also sometimes vacant. *Id*. The applicant did not present photos or other documentation regarding the use of the property.

The evidence presented by the applicant does not clearly and convincingly show that a portion of the property is used primarily by IOPDL. The property is used as the personal residence of Ms. Jin and her family, and it has not been clearly shown that any portion of the property is primarily used by IOPDL. If the property is being used primarily for residential purposes, this is not a charitable purpose and disqualifies the property for an exemption. Ms. Jin indicated that the first floor of building 2 is used by both IOPDL and God House Church, but this does not indicate a primary use by IOPDL, and it is not clear whether it is also used for personal purposes. Although Ms. Jin may use a portion of the property as president and director of the applicant, from the evidence presented, the primary use of the property appears to be a home for Ms. Jin and her family.

It is worth noting that if the two rooms on the second floor were vacant, then they would not be exempt because property that is vacant and is not actually used for an exempt purpose is not entitled to an exemption. See Skil Corporation v. Korzen, 32 Ill. 2d 249 (1965); Antioch Missionary Baptist Church v. Rosewell, 119 Ill. App. 3d 981 (1st Dist. 1983). Furthermore, although providing food and shelter to homeless people is a charitable activity, nothing in the record indicates that this is the primary use of the property. The evidence does not substantiate this use and does not indicate how many times this happened on the property during 2016. As stated previously, isolated incidents of charity are not sufficient to establish that the use of the property is primarily charitable. See Morton Temple Association, Inc. v. Department of Revenue, 158 Ill. App. 3d 794, 796 (3rd Dist. 1987). Because the property is not owned by a charitable organization and the primary use appears to be as a home for Ms. Jin and her family, it is not necessary to address whether the applicant meets the factors in Methodist Old Peoples Home, *supra*, to be a charitable organization.

Ms. Jin indicated that even though her family has been struggling financially and she works for IOPDL as a volunteer, she believes that her work is a calling from God. Ms. Jin's work towards getting the website operational is laudable, but laudable acts do not necessarily constitute charity. See Coyne Electrical School v. Paschen, 12 Ill. 2d 387, 399 (1957); Rogers Park Post No. 108, American Legion v. Brenza, 8 Ill. 2d 286, 291 (1956); Turnverein Lincoln v. Board of Appeals of Cook County, 358 Ill. 135, 144-145 (1934). As stated previously, exemption provisions are strictly construed, and all debatable questions must be resolved in favor of taxation. Eden Retirement Center, Inc., *supra*. According to the evidence presented by the applicant, the property is neither

owned by a charitable organization nor used primarily for charitable purposes. Because the applicant has failed to clearly and convincingly show that the property meets the statutory requirements for a charitable exemption, the exemption must be denied.

Religious Exemption

Section 15-40 of the Property Tax Code allows exemptions for religious purposes and provides, in relevant part, as follows:

> (a) Property used exclusively for:
>
> (1) religious purposes, or
> (2) school and religious purposes, or
> (3) orphanages
> qualifies for exemption as long as it is not used with a view to profit.
>
> (b) Property that is owned by
>
> (1) churches or
> (2) religious institutions or
> (3) 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 also qualifies for exemption. . . .
>
> 35 ILCS 200/15-40.

The term "exclusively" refers to the primary purpose for which the property is used. McKenzie v. Johnson, 98 Ill. 2d 87, 98 (1983).

In order to qualify for the exemption under subsection (a) of section 15-40, the property must be used exclusively for religious purposes and not used with a view to profit. This subsection does not require the property to be owned by a religious

organization. Ownership is relevant, however, with respect to subsection (b) of section 15-40, which allows an exemption for housing facilities provided for ministers.

The applicant has argued that the property is a housing facility for a minister (Mr. Han), and, therefore, would qualify for an exemption under subsection (b). Ms. Jin stated Mr. Han is the pastor of God House Church, and the residential dwelling on the property is the housing facility for him and his family.

The property does not qualify for an exemption under subsection (b) as a housing facility for a minister because the property is not owned by a church, religious institution, or religious denomination. As previously discussed, Ms. Jin is the owner of the property; she has all the incidents of ownership. The evidence does not include any documents relating to the organization of God House Church, such as the articles of incorporation or bylaws, and nothing in the record supports a finding that the church is the owner of the property. Because the property is not owned by God House Church, the property does not qualify for an exemption under subsection (b) of section 15-40.

In addition, God House Church is not the applicant in this case. In OKO, LLC v. Department of Revenue, 2011 IL App (4th) 100500, the applicant, which the parties conceded was not a charitable entity, was seeking a charitable exemption for property that it claimed was owned by a charitable organization. The court found, *inter alia*, that the exemption required ownership by a charitable entity, and because the applicant admitted it was not a charitable organization, the applicant was not entitled to the exemption. *Id*. at ¶40. In the present case, the applicant is not a church, religious institution, or religious denomination, and therefore, the exemption cannot be granted under subsection (b).

The applicant has also raised an argument that the property qualifies for an exemption under subsection (a) because a portion of the property (which Ms. Jin refers to as "building 1") is used primarily for religious purposes by God House Church. Ms. Jin stated that a portion of their home is used for religious worship. She claims that one room has a big cross and an old Bible and is used as a holy sanctuary place. She indicated that the living room has a mini grand piano and is used as a place of worship. Ms. Jin said that they have two worship services on Sunday. (Tr. p. 35) The first worship service is solely for her family, and the second worship service includes other people if they want to attend. She said that sometimes no one shows up for the second service. She could not specify how many people are in the congregation, and she said there are no other services during the week. She said that sometimes people come to the house for prayers, and she claims that the property is used to study and meditate on the Bible and to pray ceaselessly.

In order to qualify under subsection (a), the property must be primarily used for religious purposes. McKenzie v. Johnson, *supra*. Property may have more than one use at any given time, but the exemption is determined based on the primary use and not on any secondary or incidental use. People ex rel. Marsters v. Missionaries, 409 Ill. 370, 375 (1951). As stated previously, the property cannot have more than one primary use.

The evidence that the applicant presented does not support a finding that the property qualifies for an exemption under subsection (a). First, there is no evidence that the property has been zoned for use as a public church. Without the proper zoning, the property cannot be used as a place for public worship as God House Church.

In addition, as stated in the previous section concerning the charitable purposes exemption, the evidence indicates that the property is primarily used as the personal residence of Ms. Jin and her family.[1] If the property was being used primarily for residential purposes during 2016, then this is a secular purpose that disqualifies the property for an exemption. Occasional or sporadic religious use does not constitute the primary use of the property. Mr. Han is the pastor of the church, but he also works 16-hour days in other jobs in order to pay the mortgage for the home. The amount of time that he devotes to the church must, therefore, be minimal. In this case, the property is primarily used as a residential dwelling for Ms. Jin and her family. It is important to note that people of many faiths say prayers in their homes on a regular basis. Allowing an exemption when prayer occurs in a personal residence would call for an extraordinarily liberal interpretation of the religious exemption statute and would be contrary to the requirement to strictly construe the statute in favor of taxation.

Ms. Jin and her husband are very passionate about their work; they fervently believe that they are following God's will with the work that they do, and they consider it to be missionary work. It is a noble pursuit, but as previously stated, pursuing a noble cause does not necessarily warrant an exemption. See Coyne Electrical School, at 399; Rogers Park Post No. 108, American Legion, at 291; Turnverein Lincoln, at 144-145. Exemption provisions are strictly construed, and all debatable questions must be resolved in favor of taxation. Eden Retirement Center, Inc., *supra*. The evidence presented by the applicant indicates that the property is not primarily used for religious purposes and is not owned by a church, religious institution, or religious denomination. Because the

[1] The applicant's argument that the property is used as a housing facility for a minister is also consistent with this finding.

applicant has failed to clearly and convincingly show that the property meets the statutory requirements, the exemption must be denied.

Recommendation:

For the foregoing reasons, it is recommended that the property is not entitled to an exemption for the year 2016.

Linda Olivero
Administrative Law Judge

Enter: December 28, 2017