

PT 04-25
Tax Type: Property Tax
Issue: Religious Ownership/Use

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

**SAVING GRACE
CHURCH, INC.
APPLICANT**

v.

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

**No. 02-PT-0081
(01-16-2913)**
P.I.N.S: 20-19-224-036

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Ms. Tracie R. Porter of Brown, Udell & Pomerantz on behalf of the Saving Grace Church, Inc. (the “applicant”); Mr. Marc Muchin, Special Assistant Attorney General, on behalf of the Illinois Department of Revenue (the “Department”).

SYNOPSIS: This proceeding raises the following issues: (1) whether the applicant held any ownership interest in real estate identified by Cook County Parcel Index Number 20-19-224-036 (the “subject property”) at any point during the 2001 assessment year; and, (2) whether the subject property was “used exclusively for religious purposes,” as required by 35 **ILCS** 200/15-40 during the 2001 assessment year.

The underlying controversy arises as follows:

The applicant filed a Real Estate Tax Exemption Complaint with the Cook County Board of Review, which evaluated this matter and recommended to the Department that the requested exemption be denied. Dept. Ex. Nos. 2, 3. The Department then issued its initial determination in this matter, finding that the subject

property is not in exempt ownership and not in exempt use, on October 24, 2004. Dept. Ex. No. 1. The applicant filed a timely appeal to this determination and subsequently presented evidence at a hearing, at which the Department also appeared. Following submission of all evidence and a careful review of the record, I recommend that the Department's initial determination in this matter be modified to reflect that the subject property be exempt from real estate taxation for 33% of the 2001 assessment year.

FINDINGS OF FACT:

1. The Department's jurisdiction over this matter and its position therein are established by the admission into evidence of Dept. Ex. Nos. 1, 2 and 3.
2. The Department's position in this matter is that the subject property is not in exempt ownership and not in exempt use. Dept. Ex. No. 1.
3. The subject property is located in Chicago, IL and improved with a one story, 5,557.14 square foot building. Dept. Ex. No. 2.
4. The applicant is an Illinois not-for-profit corporation organized for purposes of carrying on the work of a Baptist church consistent with the Scriptural guidance contained in the Book of Acts, Chapter 2, verses 41 to 47. Joint Group Ex. No. 1, Documents E, F, M
5. The applicant's constitution and by-laws provide, *inter alia*, that: (a) its pastor is to "be the director of spiritual and business interests of the church," with full authority "to lead and advise in all matters pertaining to the church[;]" and, (b) "[t]he authority of the pastor should stand unless there is an 80% vote of [the applicant's governing board] and 80% vote of the active congregation against him." Joint Group Ex. No. 1, Document F.

6. Woodroe Claiborne, Jr. was the applicant's pastor throughout the 2001 assessment year. Tr. pp. 22-23.
7. The applicant's "Statement of Revenue and Expenses" reveals the following information about its financial structure for the period January 1, 2001 through December 31, 2001:
 - A. The applicant had total revenues of \$21,252.00, all of which came from tithes and offerings;
 - B. The applicant's incurred total expenses of \$24,231.39, with: (1) \$6,095.00 or 25%, attributable to musicians; (2) \$1,500.00 or 6% attributable to professional services; (3) \$1,412.50 or 6% attributable to supplies; (4) \$2,950.00 or 12% attributable to rent;¹ (5) \$1,759.22 or 7% attributable to heating; (6) \$2,555.00 or 11% attributable to mortgage payments; (7) \$908.43 or 4% attributable to electric; (8) \$256.24 or 1% attributable to telephone; (9) \$625.00 or 3% attributable to contributions; (10) \$878.00 or 4% attributable to legal fees; (11) \$246.00 or 1% attributable to insurance; and, (12) \$5,046.00 or 21% attributable to depreciation.

Applicant Ex. No. 9.

8. On February 9, 2001, Woodroe Claiborne, Jr. entered into a real estate contract to purchase the subject property from the "owner of record" for \$75,000.00.

Applicant Ex. No. 2.

9. This contract contained a clause stating that the purchase was subject to the contingency that the buyer, Woodroe Claiborne, Jr., obtain a mortgage commitment in the amount of \$60,000.00 to finance his purchase of the subject property. *Id.*

1. This rent was payable on a property other than the one that is currently at issue.

10. On July 27, 2001, Woodroe Claiborne, Jr. and his wife Gladys, obtained a loan from Firststar Bank (“Firststar”) in the amount of \$60,000.00 that was secured by a mortgage on their personal residence. Applicant Ex. No. 7.
11. The promissory note for this loan stated, in relevant part, that the loan was to be paid in 240 installments of \$511.50 per month, with the first installment due on August 26, 2001 and all subsequent payments to be made no later than the 26th of each month until July 26, 2021, when the final payment will be due. Applicant Ex. No. 7.
12. The closing for Woodroe Claiborne, Jr.’s purchase of the subject property was held on August 9, 2004, at which time he obtained ownership of the subject property pursuant to a trustee’s deed. Applicant Ex. Nos. 13, 14.
13. Applicant made the monthly payments of \$511.50 from the time the first installment payment was due through the end of 2001. Applicant Ex. Nos. 6B-1, 6B-2 and 6B-3; Applicant Ex. No. 9.
14. In order to enable the applicant to obtain usage of the subject property at the earliest possible date, Woodroe M. Claiborne, Jr. entered into a “Building Lease” with the applicant. This lease contained the following relevant terms and conditions:
 - A. The lease was to run for a term of one year, commencing September 1, 2001 through August 31, 2002;
 - B. Mr. Claiborne was to give the applicant “immediate possession” of the building; and,

- C. The applicant was to use the building for no purpose other than
“holding religious services and events ...[.]”

Applicant Ex. No. 5.

15. On April 29, 2002, Woodroe Claiborne, Jr. executed a quit claim deed, for the nominal consideration of \$10.00, transferring ownership of the subject property to the applicant. Joint Group Ex. No. 1, Document D-1.
16. On June 12, 2003, the Department issued a determination exempting the subject property from real estate taxation for 68% of the 2002 assessment year. Applicant Ex. No. 12.²

CONCLUSIONS OF LAW:

Article IX, Section 6 of the Illinois Constitution of 1970 states 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.

Pursuant to Constitutional mandate, the General Assembly enacted Sections 15-40 of the Property Tax Code (35 **ILCS** 200/1-1, *et seq.*, 15-40, 15-125), which provides for exemption of the following:

200/15-40. Religious purposes, orphanages, or school and religious purposes

§ 15-40. All property used exclusively for religious purposes, or used exclusively for school and religious

2. This determination is not the subject of the present appeal. However, the 68% of the 2002 assessment year for which the applicant was granted a property tax exemption does, in fact, correspond to the 68% of the 2002 assessment year that transpired between April 29, 2002 and the last day of the 2002 assessment year, December 31, 2002. *See*, 35 **ILCS** 200/9-195 (requiring, in relevant part, that property transferred from a use that is not tax exempt under the Property Tax Code to a use that is tax exempt under the Property Tax Code be qualified as tax exempt as of the date that the tax exempt user obtained its “right of possession” to the property). *See also*, 35 **ILCS** 200/1-155 (defining the term “year” for property tax purposes as meaning a calendar year).

purposes, or for orphanages and not leased or otherwise used with a view to a profit ...[.].

35 ILCS 200/15-40.

Statutes conferring property tax exemptions are to be strictly construed, with all facts construed and debatable questions resolved in favor of taxation. People ex rel. Nordland v. Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). Moreover, the applicant bears the burden of proving, by clear and convincing evidence, that the property it is seeking to exempt falls within the appropriate statutory exemption. Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App.3d 678 (4th Dist. 1994).

In this case, the relevant statutory provision, 35 ILCS 200/15-40, specifically bars exemption where the property is used “with a view to profit.” The term “profit” has been defined, for property tax exemption purposes, as the income or other return that enables a property owner to derive personal financial benefit from owning and operating income-producing property. Victory Christian Church v. Department of Revenue, 264 Ill. App.3d 919, 923 (1st Dist. 1988); 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); People ex rel. County Collector v. Hopedale Medical Foundation, 46 Ill. 2d 450 (1970).

As both owner and lessor of the subject property, Mr. Claiborne was certainly in a position to derive personal financial benefit from leasing this property to the applicant. Thus, the Department is justifiably concerned that the applicant not use this forum to

provide Mr. Claiborne with what, in the absence of other overriding factors, would be tax savings that inure to his personal benefit.

The principal one of these overriding factors is that Mr. Claiborne, who is the applicant's pastor, was acting as a fiduciary for the applicant throughout all of the transactions in question. The applicant's constitution and by-laws (Joint Group Ex. No. 1, Document) authorize its pastor to act as its *de facto* business manager. In that capacity, Mr. Claiborne had inherent authority to act in furtherance of the applicant's business affairs. Moreover, the existence of this authority created a fiduciary relationship that obligated Mr. Claiborne to safeguard the applicant's business interests.

Where such a fiduciary relationship exists, the law presumes that any transaction between the parties by which the fiduciary has profited is fraudulent. Mile-O-Mo Fishing Club, Inc. v. Noble, 62 Ill. App.2d 50, 56-57 (5th Dist, 1965). Therefore, Mr. Claiborne was under an affirmative legal duty not to exercise any of his authority as the applicant's business manager in a manner that would cause him to obtain financial gain from any real estate or other transactions he undertook while acting in that capacity.

A court of competent jurisdiction could enforce this duty by imposing a constructive trust, in favor of the applicant, against the subject property or any of the applicant's other assets that Mr. Claiborne acquired or used for his personal benefit. *Id.* at 58. Thus, Mr. Claiborne's legally enforceable fiduciary obligations to safeguard the applicant's business interests rendered it legally impossible for him to derive personal "profit" from any of the transactions currently at issue.

Furthermore, the applicant would not have required Mr. Claiborne's personal assistance if it possessed the credit history that was necessary to qualify for a mortgage

that would have enabled it to purchase the subject property in its own name. The evidence of record is that the applicant, itself, did not possess the requisite credit history. Tr. p. 25. Accordingly, this case falls under a line of appellate court decisions holding that exemptions should not be destroyed if practical business realities prevent an otherwise exempt organization from obtaining legal title to real estate in its own name. Christian Action Ministry v. Department of Local Government Affairs, 74 Ill.2d 51 (1978); Cole Hospital v. Champaign County Board of Review, 113 Ill. App. 3d 96 (4th Dist. 1983).

In this case, there is no dispute that the applicant qualifies as the type of religious institution whose property is subject to exemption under Section 15-40. Nor is there any dispute that the subject property would have been in exempt use if the applicant had held legal title to the subject property in its own name. Thus, in light of the specific facts of this case, the applicant should not be forced to forfeit a property tax exemption simply because it lacked the required credit history. To conclude otherwise would have the undesired public policy effect of penalizing the applicant for the unfavorable consequences of economic realities that were not within its capacity to control. Christian Action Ministry, *supra*; Cole Hospital, *supra*.

Such a penalty is especially inappropriate in this case because it would effectively deprive the applicant of its financial interest in the subject property. The applicant developed this interest by making the each of the five mortgage payments that Mr. Claiborne would have been required to make between August 26, 2001 and December 26, 2001.

Due to the presence all of these overriding factors quite specific to this case, I conclude that none of the uses associated with the series of transactions that Mr. Claiborne undertook for applicant's benefit were "with a view to profit" in violation of Section 15-40.

This conclusion is, however, subject to the pro-ration provisions contained in Section 9-195 of the Property Tax Code, which state, in relevant part, as follows:

... when a fee simple title or lesser interest in property is purchased, granted, taken or otherwise transferred for a use exempt from taxation under this Code, that property shall be exempt from taxes from the date of the right of possession, except that property acquired by condemnation is exempt as of the date the condemnation petition is filed.

35 ILCS 200/9-195

In this case, the applicant did not obtain its "right of possession" to the subject property until its leasehold interest in this property became effective on September 1, 2001. Therefore, any exemption concerns herein are limited to the 33% of the 2001 assessment year³ that transpired between September 1, 2001 and December 31, 2001 by operation of Section 9-195 of the Property Tax Code.

WHEREFORE, for the reasons set forth above, I recommend that real estate identified by Cook County Parcel Index Number 20-19-224-036 be exempt from real estate taxation for 33% of the 2001 assessment year under Section 9-195 and 15-40 of the Property Tax Code.

Date: 8/25/2004

Alan I. Marcus
Administrative Law Judge

3. Section 1-155 of the Property Tax Code defines the term "year" for Property Tax purposes as meaning a calendar year. 35 ILCS 200/1-155.