

**PT 11-14**  
**Tax Type: Property Tax**  
**Issue: Parking Lot Exemption**

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

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**6221 N. KENMORE, LLC,**  
**APPLICANT**

**v.**

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

**No. 09-PT-0070**

**Real Estate Exemption**

**For 2007 Tax Year**  
**P.I.N. 14-05-206-007-0000**  
**Cook County Parcel**

**Julie-April Montgomery**  
**Administrative Law Judge**

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**RECOMMENDATION FOR DISPOSITION**

**APPEARANCES:** Craig J. Donnewald of Finkel, Martwick & Colson, PC on behalf of 6221 N. Kenmore, LLC; John D. 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 real estate identified by Cook County Parcel Index Number 14-05-206-007-0000 (“subject property”) qualifies for a parking lot exemption from 2007 real estate taxes under 35 ILCS 200/15-125 of the Property Tax Code (“Code”) (35 ILCS 200/1-1 *et seq.* ).

In response to 6221 N. Kenmore, LLC’s (“Taxpayer”) application for property tax exemption for the tax year 2007, the Cook County Board recommended exemption for that entire year. However, on October 17, 2008, the Illinois Department of Revenue (“Department”) denied

Taxpayer's request for exemption finding subject property had neither exempt ownership nor exempt use in 2007. Stipulation Ex. J. Taxpayer filed a timely request for a hearing with regard to the denial.

On October 22, 2010, Taxpayer and Department presented Stipulated Facts and Exhibits. After a careful review of the record, it is recommended that subject property not be exempt from real estate taxes for all of the 2007 tax year.

**STIPULATED FACTS<sup>1</sup>:**

1. Subject property consists of 7,500 square feet of land improved with a paved parking surface. Stipulation No. 1.
2. Subject property is a parking lot. Stipulation No. 3.
3. Since late February 2005 subject property has been used regularly, continuously and exclusively as a parking lot by Sacred Heart School ("School"). Subject property's parking lot is used by School employees and visitors to School on weekdays, and those needing parking for School related functions on evenings and weekends. Stipulation No. 5.
4. Subject property's parking lot is operated by Convent of the Sacred Heart of Chicago ("Convent"). *Id.*
5. Title to subject property is held by Taxpayer. Stipulation No. 6.
6. Taxpayer is a limited liability company. *Id.*
7. Since June 2004 Taxpayer's sole and managing member has been Convent. *Id.*

**FINDINGS OF FACT:**

1. Convent's purpose is to "own and operate institutions of learning...by operating a school or schools...for children through the 12<sup>th</sup> grade or its equivalent, which [s]chool must be a

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<sup>1</sup> These are the Stipulated Facts of the Parties that have been accepted by the Administrative Law Judge.

member of the Network of Sacred Heart Schools.” Stipulation Ex. C (Amended and Restated Articles of Incorporation of Convent).

**CONCLUSIONS OF LAW:**

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).

Pursuant to constitutional authority, the General Assembly enacted a parking lot exemption which provides:

Parking areas, not leased or used for profit other than those lease or rental agreements subject to subsection (b) of this Section, when used as a part of a use for which an exemption is provided by this Code and owned by any school district, non-profit hospital, school, or religious or charitable institution which meets the qualifications for exemption, are exempt. 35 ILCS 200/15-125(a).

It is well established that property tax exemption provisions are strictly construed in favor of taxation. Chicago Patrolmen's Association v. Department of Revenue, 171 Ill. 2d 263, 271 (1996). The party claiming the exemption bears the burden of proving, by clear and convincing evidence, that it is entitled to the exemption, and all doubts are resolved in favor of taxation. *Id.*

Taxpayer was denied a property tax exemption for two reasons. The first reason for denial is a lack of exempt ownership. The second reason for the Department's exemption denial is the lack of exempt use. With respect to the question of ownership, the Department claims a company holds title to subject property. The Department further alleges that the company that holds title has no exempt status. The Department thereby concludes that as titleholder, the company, or Taxpayer, is the non-exempt owner of subject property. Tr. pp. 5-6. Taxpayer, however, claims there is exempt ownership. Taxpayer alleges that the test for ownership is who has control of and derives benefits from subject property. Taxpayer asserts that under this test, the owner of subject property is an exempt entity -- Convent. Tr. pp. 7, 10.

In support of its position, Taxpayer cites Christian Action Ministry v. Department of Local Government Affairs, 74 Ill. 2d 51(1978) wherein a charitable organization, the Ministry, that was purchasing property by contract for a warranty deed so that title to the property would not pass until full payment of the contract, was found to be the owner of the property in question. The Ministry was found to have equitable ownership because it occupied and used the property for charitable purposes, had placed a large down payment on the property, made monthly payments pursuant to the contract and was responsible for the real estate taxes. The Illinois Supreme Court stated that "[w]here the legislature requires legal ownership that must obviously be respected. Where it does not, actual ownership, legal or equitable, is proper." Christian Action Ministry at 63.

How to determine ownership was explained in Board of Education of Glen Ellyn Community Consolidated School District No. 89 v. Department of Revenue, 356 Ill. App. 3d 165, 173 (2<sup>nd</sup> Dist. 2005), where the following description of the incidents of ownership test was stated:

Ownership of real estate is a broad concept and can apply to one other than the record titleholder....The meaning of the word "owner" depends upon the nature and purpose of the statute involved.....In determining ownership of property for tax purposes, the concern is with the realities of ownership rather than legal title...."Under this test, the key elements of ownership are control and the right to enjoy the benefits of the property."...The primary incidents of ownership include the right to possession, the use and enjoyment of the property, the right to change or improve the property, and the right to alienate the property at will. *Id.*

The Parties stipulate that Convent has sole control over subject property. Stipulation No. 7. But no evidence was put forth that stated what type of control Convent had over subject property. The Parties also stipulate that Convent is the only one to derive benefits from subject property in stipulation number 7<sup>2</sup>. However, this stipulation number 7 conflicts with the Parties stipulation number 5 which states that School's employees and visitors use subject property. School's use of subject property would constitute School deriving a benefit from subject property. This means both Convent and School enjoy benefits from subject property. Thus, this is not clear and convincing evidence that Convent is the owner of subject property.

Application of the incidents of ownership does not favor a finding that Convent is the owner of subject property. First, the Parties stipulate that Convent is the only one to assert possession over subject property. Stipulation No. 7. But a conflict between stipulations exists. Stipulation number 5 states School's visitors and employees use subject property or take

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<sup>2</sup> This is a verbatim recitation of the Parties' stipulation number 7: "No person or entity other than 'Convent of the Sacred Heart of Chicago, Illinois' has asserted possession and control over, or derived benefits from, the subject property since 2004."

possession of space on subject property. So Convent shares possession over subject property with School. Second, the Parties also stipulate that the use and enjoyment of subject property is with School who “continuously and exclusively [uses subject property’s] ...parking lot.” Stipulation No. 5. But Convent also uses and enjoys subject property through its operation of the parking lot. *Id.* So there are two parties –Convent and School—who have use and enjoyment of subject property. Third, no evidence, like Taxpayer’s membership or management agreements, was put forth to show whether Convent has the right to change or improve subject property, and the right to alienate at will subject property. In addition, no evidence was put forth that explains the conflicts. Thus, there exists either conflicting evidence or no evidence to establish Convent has all of the incidents of ownership over subject property, and as such, it cannot be found that Convent is the owner of subject property.

Even if Taxpayer could have prevailed in the assertion that Convent is the owner of subject property a finding of exempt ownership does not automatically follow. The record does not show Convent to be a school or school district but rather an entity that has the stated purpose of owning and operating schools. Stipulation Exs. C and D (Convent’s By-Laws). No evidence was put forth as to the actual activities of Convent apart from those associated with subject property’s parking lot. Convent has not established itself to be a religious institution. In fact, Convent’s Amended and Restated Articles of Incorporation and By-Laws state that it is organized for “exclusively educational and charitable” purposes. *Id.* But no evidence has been placed in the record to establish Convent is a charitable institution. It is also clear that Taxpayer is neither a school nor school district and there has been no evidence posited that Taxpayer is a religious or charitable institution. Thus, neither Taxpayer nor Convent could have been deemed exempt entities in 2007, and as such, there was no exempt ownership of subject property.

Inasmuch as exempt ownership did not exist, it is not necessary that the remaining parking lot exemption criteria of exempt use and the existence of a lease or use for profit be considered.

Taxpayer has the burden to prove by clear and convincing evidence that it is entitled to the parking lot exemption. Taxpayer has not placed clear and convincing evidence in the record to justify entitlement to the parking lot exemption. Thus, Taxpayer is not entitled to the parking lot exemption for 2007.

**RECOMMENDATION**

For the reasons stated above, the Department's determination which found that Cook County P.I.N. 14-05-206-007-0000 is taxable should be affirmed.

May 20, 2011

Julie-April Montgomery  
Administrative Law Judge