2013 IL App (1st) 120600-U

FIRST DIVISION
March 11, 2013

No. 1-12-0600

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

OMEGA MISSIONARY BAPTIST CHURCH, Plaintiff-Appellant, v. BRIAN A. HAMER, Director of Revenue, and THE DEPARTMENT OF REVENUE, Defendants-Appellees.	))))))))))	Appeal from the Circuit Court of Cook County. No. 11 L 50173 Honorable Margaret Ann Brennan, Judge Presiding.

O R D E R

JUSTICE ROCHFORD delivered the judgment of the court.
Justice Delort concurred in the judgment. Justice Cunningham dissented.

¶ 1 ***Held***: Administrative denial of property tax exemption affirmed where it was not established that the property owner leased the subject property to religious organization without "a view to profit."

¶ 2 Plaintiff-appellant, the Omega Missionary Baptist Church (Omega), filed a complaint for administrative review after its request for a property tax exemption for the 2008 tax year was denied by defendants-appellants, Brian A. Hamer, Director of Revenue (Director), and the Department of

Revenue (Department).[1] Omega has now appealed from an order of the circuit court affirming the Department's administrative decision. For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 In July of 2009, Omega filed an application for a property tax exemption for the 2008 tax year with the Cook County board of review. In filing that application, Omega completed the specific form adopted by the Department, "PTAX-300-R Religious Application for Non-homestead Property Tax Exemption–County Board of Review Statement of Facts." On that form, Omega sought an exemption from property taxes for property located on the 4600 block of South State Street in Chicago, consisting of those parcels of real estate more specifically identified by property index numbers 20-03-318-005 through 20-03-318-008 (the property). The application further indicated that the property was owned by 47th and State, LLC, and that Omega was leasing the property for use as a church. The property had been used for this purpose since 1953.

¶ 5 After reviewing Omega's application and specifically noting that the property was "no[t] in exempt ownership," the board of review recommended that the exemption request be denied by the Department. On December 10, 2009, the Department issued a written denial of exemption. The Department indicated that its denial followed a review of Omega's application and supporting documentation, and was based upon its conclusion that: (1) the property was not in exempt ownership; (2) the property was not in exempt use; and (3) the applicant, Omega, was a lessee and not the owner of the property.

¶ 6 Omega filed a timely request for an administrative hearing on the Department's denial of the

[1]Where there is no need for differentiation, the defendants-appellants will be collectively referred to as the "Department."

exemption, and that hearing was held before an administrative law judge (ALJ) on October 6, 2010. At the hearing, Omega presented both documentary evidence and the testimony of: (1) its pastor, Reverend Joseph Henry, and two of its members/trustees; (2) Mr. Gerese Tadros, the current owner of the property; and (3) Mr. John O'Dwyer, a real estate appraiser.

¶ 7 In general, the evidence established that Omega was a Baptist congregation that had been operating a church on a portion of the property since the 1950's. Over the years, Omega had acquired additional parcels of property and, together, these parcels made up the property that was currently being used as a church and was the subject to the exemption application. Omega was a not-for-profit, tax-exempt religious organization in good standing with both the federal Internal Revenue Service and the Department. As such, the property had historically been granted an exemption from property taxes.

¶ 8 In the mid-2000's, however, the demographics of the neighborhood changed and Omega began to lose members, experience a reduction in contributions, and run into financial difficulties. This included difficulty in paying its $4,200 monthly mortgage payment on the property. Omega ultimately filed for bankruptcy and lost the property to foreclosure in 2006. The property was acquired in 2007 by a trust benefitting 47th and State, LLC, a company owned by Mr. Tadros.

¶ 9 Mr. Tadros testified that he and his family have bought, sold, and rented residential, commercial, and retail properties on the south side of Chicago for years. This included properties near Omega's church. He also testified that his family also had a long-standing relationship with Omega. Specifically, Mr. Tadros' father had a personal relationship with Reverend Henry.

¶ 10 In 2006 and 2007, Mr. Tadros had sold a number of properties and had made a significant capital gain on those investments. Around the same time, he learned through his attorneys that

Omega's property was in foreclosure. After doing some more research and talking with Reverend Henry, Mr. Tadros decided to use those gains to purchase the property from the foreclosing bank for $960,000. Mr. Tadros testified that this purchase was part of a "1031 exchange"[2] and was also made in order to "help out Omega." Mr. Tadros agreed that he made this decision despite the fact that he could also have bought some other property that might have "produced a lot better return on my investment."

¶ 11 After purchasing the property, Mr. Tadros asked Reverend Henry what Omega could afford to pay in rent. The two agreed on a monthly rent of $3,500, and Omega entered into two leases with Mr. Tadros for the property.[3] However, the two leases contained in the record–covering the period from February of 2007 through February of 2010–reflect that Omega also had responsibility for other costs as well. Specifically, those leases indicate that Omega was also responsible for the payment of utilities, Mr. Tadros' insurance costs, and "real estate taxes."

¶ 12 Mr. Tadros testified that he subsequently allowed Omega to pay the rent late or in installments when necessary, and to do so without any penalty. He also indicated that he would have been willing to waive payments or lower the rent if Omega could not afford the monthly payments. However, Mr. Tadros did indicate that the rent needed to be sufficient to establish a reserve fund for future improvements to the property, and that he "didn't want to lose any money."

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[2] Although not specified in the record, we take judicial notice of the fact that such an exchange allowed Mr. Tadros to defer taxes on the capital gains he would otherwise have recognized upon the recent sale of the other properties. *Talerico v. Olivarri*, 343 Ill. App. 3d 128, 132 (2003); 28 U.S.C. § 1031 (2000).

[3] The record reveals that Mr. Tadros owned and leased the property via a number of other legal entities under his control. For brevity, in this order we will generally refer to the property as having been leased and owned by Mr. Tadros himself.

Excerpts from Mr. Tadros' tax returns established that his ownership of the property earned him a profit of $26,831 in 2008 and $4,273 in 2009. No deductions for depreciation were taken in those tax years. Mr. Tadros agreed that his income on the property did not provide a "good rate of return."

¶ 13 Reverend Henry and one of the other members of the church testified that Mr. Tadros and his family had owned various properties in the area over the years and had a long-standing relationship with the local community. They each also testified that Mr. Tadros had never indicated that he purchased the property with an intent to profit from leasing it to Omega.

¶ 14 Finally, Mr. O'Dwyer testified that he had completed an appraisal of the property to determine the open market rental value of the property. Mr. O'Dwyer testified that the rent Omega was paying, $3,500 per month (or $3.36 per square foot), was less than half the market rate rent of $8.50 per square foot. At this rental rate, Mr. O'Dwyer opined that Mr. Tadros was "subsidizing" Omega and would not earn a return on his investment due to the "opportunity cost of money." Nevertheless, Mr. O'Dwyer also testified that the monthly rental also left Mr. Tadros with $2,800 per month in net profit, even after accounting for expenses and the need to establish a reserve fund. This translated into an overall 3% annual rate of return.

¶ 15 On January 14, 2011, the ALJ issued a written recommendation for disposition concluding that the Department's initial decision to deny the application for a 2008 property tax exemption for the property should be affirmed. The ALJ first found that this matter was governed by two provisions of the Property Tax Code (35 ILCS 200/1-1 *et seq*. (West 2008)). First, section 15-40(a)(1) of the Property Tax Code provides that property "used exclusively for *** religious purposes *** qualifies for exemption as long as it is not used with a view to profit." 35 ILCS 200/15-40(a)(1) (West 2008). Second, section 15-125(a) of the Property Tax Code provides that

"[p]arking areas, not leased or used for profit ***, 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) (West 2008).

¶ 16 The ALJ then noted that the evidence established that Mr. Tadros' ownership and leasing of the property to Omega earned him a profit of $26,831 in 2008 and $4,273 in 2009. The ALJ also noted that Mr. O'Dwyer testified that Mr. Tadros was earning an overall 3% annual return on his investment. Furthermore, while the evidence also established that Omega was not being charged a full market rental rate and that Mr. Tadros could, therefore, be making a greater return on his investment, the ALJ also noted that the relevant statutory provisions were concerned with "whether the property is used with a view to profit, not whether the owner is maximizing his profit."

¶ 17 As such, because the evidence established that Mr. Tadros was earning some profit on the property, the ALJ concluded that it was being "used with a view to profit" and was, therefore, ineligible for a property tax exemption under section 15-40(a)(1) of the Property Tax Code. Moreover, the ALJ also concluded that–while it was "unclear from the record exactly what area is used for parking" by Omega–that portion of the property so utilized was "without a doubt" ineligible for an exemption under section 15-125(a) of the Property Tax Code because it was not also owned by Omega.

¶ 18 On the same day the ALJ issued its written recommendation for disposition, the Director issued a written notice of decision adopting the ALJ's recommendations as the Department's final administrative decision in this matter. Omega then filed a timely complaint for administrative review in the circuit court. In a January 27, 2012, written order, the circuit court affirmed that

decision after concluding that the "decision of the ALJ and adopted by the Director was not clearly erroneous." Omega now appeals.

¶ 19 II. ANALYSIS

¶ 20 On appeal, Omega contends that its request for a property tax exemption was improperly denied. We disagree.

¶ 21 A. Preliminary Matters

¶ 22 As an initial matter, we note that the Department's initial written denial of exemption, issued on December 10, 2009, identified three reasons for that denial. The third basis for denying the exemption states: "APPLICANT IS NOT THE OWNER OF THE PROPERTY. APPLICANT IS LESSEE OF THE PROPERTY. NO LEASEHOLD ASSESSMENT HAS BEEN MADE FOR THE ASSESSMENT YEAR FOR WHICH APPLICATION HAS BEEN MADE." While it did not form the basis of the Department's final administrative decision and has not been raised by the parties, we briefly address the possible significance–if any–of this reason for denying Omega's application.

¶ 23 First, it appears as if this basis for denying the application may be making reference to section 9-195(a) of the Property Tax Code, which provides that "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 on property that is not exempt, and the lessee shall be liable for those taxes." 35 ILCS 200/9-195(a) (West 2008). As our supreme court has explained, "[r]eal estate taxes are only permitted against owners of land. The only exception to this rule is found in section 9–195 of the Property Tax Code [citation], which allows the assessor to tax the leasehold interest of the lessee

in property *leased* to it by an owner whose property is exempt." (Emphasis in original.) *Millennium Park Joint Venture, LLC v. Houlihan*, 241 Ill. 2d 281, 298 (2010).

¶ 24 Omega's application for an exemption clearly identified itself as a lessee of the property, and not the owner. As such, the Department's third reason for denying the application may have merely been intended to indicate that Omega was not entitled to an exemption from any tax assessment on its leasehold interest in the property, because no such tax had ever been assessed pursuant to section 9-195. Indeed, no such leasehold assessment could ever have been made in this case, because section 9-195 only applies where tax-exempt property is leased to a non-exempt lessee, a situation not presented here.

¶ 25 Nevertheless, Omega was not in fact applying for an exemption from any assessment on its leasehold interest in the property. Rather, Omega was clearly applying–as a lessee and not as an owner–for an exemption from property taxes on the property itself. Thus, it is also possible that the Department's third basis for rejecting that application was an attempt to indicate that Omega (as lessee) did not have standing to make such an application on behalf of Mr. Tadros (the owner).

¶ 26 However, it is well recognized that any such issue is considered an affirmative defense, which is forfeited if not timely raised. *Nationwide Advantage Mortgage Co. v. Ortiz*, 2012 IL App (1st) 112755, ¶ 24. Moreover, it is also "quite established" that if an argument, issue, or defense is not presented in an administrative hearing, it is procedurally defaulted and may not be raised for the first time on administrative review. *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 212 (2008). "The rule is based on the demands of orderly procedure and the justice of holding a party to the results of his or her conduct where to do otherwise would surprise the opponent and deprive the opponent of an opportunity to contest an issue in the tribunal that is

supposed to decide it." *Id*. Indeed, unless such an argument, issue, or defense is presented at an administrative hearing, this court would be without all the facts necessary to consider the issue as "administrative review is confined to the record created before the agency." *Arvia v. Madigan*, 209 Ill. 2d 520, 528 (2004).

¶ 27 Here, the fact that Omega leased the property from Mr. Tadros was evident to the Department at all times below. Indeed, that information was provided on the PTAX-300-R form filed by Omega. Nevertheless, the issue of Omega's standing, if that was indeed the issue, was *never* again raised by the Department at the administrative hearing before the ALJ, nor did the Department raise this issue in the circuit court or before this court on appeal. Thus, Omega's standing has never been properly placed at issue in this matter, nor was an opportunity presented to develop a full record on this issue in the proper tribunal. Therefore, we find that any issue as to Omega's standing has been forfeited.

¶ 28 Moreover, even if we were to consider this issue on the record before us we would find evidence of Omega's legal standing. "[S]tanding in Illinois requires only some injury in fact to a legally cognizable interest." *Greer v. Illinois Housing Development Authority*, 122 Ill. 2d 462, 492 (1988). More specifically, " '[o]ne who is adversely affected in fact by governmental action has standing to challenge its legality.' " (Emphasis in original.) *Id*. at 488 (quoting 4 K. Davis, Administrative Law Treatise § 24:2, at 212 (2d ed. 1983)). The leases between Omega and Mr. Tadros entered into evidence at the administrative hearing clearly indicate that Omega may be held ultimately responsible for the payment of any property taxes assessed on the property. As such, Omega would appear to have a sufficient legal interest to support its standing in this matter.

¶ 29 Finally, we also conclude that the Department's jurisdiction over the instant exemption

application would not be affected even if Omega did lack standing. Section 15-25 of the Property Tax Code generally provides, without reference to any requirement for an exemption application, that "[i]f the Department determines that any property has been unlawfully exempted from taxation, or is no longer entitled to exemption, the Department shall, before January 1 of any year, direct the chief county assessment officer to assess the property and return it to the assessment rolls for the next assessment year." 35 ILCS 200/15-25 (West 2008). The "expansive language in this provision" has been interpreted to reflect "a legislative intent to authorize review of exemption claims by the Department regardless of whether the property owner initiated the proceedings." *Highland Park Women's Club v. Department of Revenue*, 206 Ill. App. 3d 447, 462 (1990) (discussing this same statutory language, as previously codified at Ill. Rev. Stat. 1985, ch. 120, ¶ 612a). As such, the Department had the authority to review the exemption application, even if it should have been filed by Mr. Tadros and Omega "lacked standing." *Id.* We therefore will consider this appeal on the merits.

¶ 30 B. Standard of Review

¶ 31 Next, we note that the parties dispute the proper standard of review applicable in this matter.

¶ 32 Our review of the Department's final administrative decision is governed by the Administrative Review Law. 735 ILCS 5/3-101, *et seq*. (West 2008); 35 ILCS 200/8-40 (West 2008). While our review extends to all questions of law and fact presented by the record (735 ILCS 5/3-110 (West 2010)),"[i]n administrative cases, our role is to review the decision of the administrative agency, not the determination of the circuit court" (*Marconi v. Chicago Heights Police Pension Board*, 225 Ill. 2d 497, 531 (2006)). "The applicable standard of review depends upon whether the question presented is one of fact, one of law, or a mixed question of fact and law."

American Federation of State, County and Municipal Employees, Council 31 v. Illinois State Labor Relations Bd., 216 Ill. 2d 569, 577 (2005).

¶ 33 Specifically, it is well established that an agency's findings and conclusions of fact are deemed to be *prima facie* true and correct and overturned only if they are against the manifest weight of the evidence. *City of Sandwich v. Illinois Labor Relations Board*, 406 Ill. App. 3d 1006, 1008 (2011) (citing *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 210-11 (2008)). A determination is against the manifest weight of the evidence if the opposite conclusion is clearly evident. *Id*.

¶ 34 Moreover, it is clear that a question of law–such as the proper interpretation of a statute–is to be reviewed *de novo*. *Id*. Our supreme court has described this type of review as " ' independent and not deferential.' " *Goodman v. Ward*, 241 Ill. 2d 398, 406 (2011) (quoting *Hossfeld v. Illinois State Board of Elections*, 238 Ill. 2d 418, 423 (2010)).

¶ 35 Finally, it has been established that a "clearly erroneous" standard of review is to be applied to mixed questions of law and fact. *City of Sandwich,* 406 Ill. App. 3d at 1008. Mixed questions of fact and law are " 'questions in which the historical facts are admitted or established, the rule of law is *undisputed*, and the issue is whether the facts satisfy the statutory standard, or to put it another way, whether the rule of law as applied to the established facts is or is not violated.' " (Emphasis added.) *Cinkus*, 228 Ill. 2d at 211 (quoting *American Federation of State, County and Municipal Employees, Council 31 v. State Labor Relations Board*, 216 Ill. 2d 569, 577 (2005). An agency's decision is 'clearly erroneous' when the reviewing court is left with a firm and definite conviction that the agency has committed a mistake. *City of Sandwich,* 406 Ill. App. 3d at 1008. However, "where the historical facts are admitted or established, but there is a *dispute* as to whether the

governing legal provisions were interpreted correctly by the administrative body, the case presents a purely legal question for which our review is *de novo*." (Emphasis added.) *Goodman*, 241 Ill. 2d at 406.

¶ 36 Our supreme court has "acknowledge[d] that the distinction between these three different standards of review has not always been apparent in [its] case law." *Cinkus*, 228 Ill. 2d at 211; see also Kathleen L. Coles, *Mixed Up Questions of Fact and Law: Illinois Standards of Appellate Review in Civil Cases Following the 1997 Amendment to Supreme Court Rule 341*, 28 S. Ill. U. L. J. 13 (2003). Nevertheless, while the underlying facts are not in dispute in this case, the parties do dispute the Department's interpretation of the relevant provisions of the Property Tax Code. As such, and pursuant to our supreme court's decision in *Goodman*, our review must be *de novo*.

¶ 37 The only remaining question is what deference, if any, we should give to the Department's interpretation of those statutory provisions in conducting such a *de novo* review. Despite the fact that our *de novo* review is independent and not deferential, in *Provena Covenant Medical Center v. Department of Revenue*, 236 Ill. 2d 368 (2010) (plurality op.), our supreme court specifically noted that "[e]ven where review is *de novo*, an agency's construction is entitled to substantial weight and deference. Courts accord such deference in recognition of the fact that agencies make informed judgments on the issues based upon their experience and expertise and serve as an informed source for ascertaining the legislature's intent." *Id*. at 387 n. 9.

¶ 38 While this pronouncement is couched in somewhat broad terms, we note that historically our supreme court has only afforded deference to an administrative agency's interpretation of an *ambiguous* statute. *Abrahamson v. Illinois Department of Professional Regulation*, 153 Ill. 2d 76, 97-98 (1992); *Boaden v. Department of Law Enforcement*, 171 Ill. 2d 230, 239 (1996); *Hadley v.*

Illinois Department of Corrections, 224 Ill. 2d 365, 370 (2007). Furthermore, even if some deference is to be afforded to the Department's statutory interpretations, our supreme court has consistently indicated that "[a]n agency's interpretation is not binding, however, and will be rejected when it is erroneous." *Shields v. Judges' Retirement System of Illinois*, 204 Ill. 2d 488, 492 (2003); *Hadley*, 224 Ill. 2d at 371 (same). As such, while we will consider the Department's statutory interpretations in this case, we remain free to reject any that we find unreasonable or otherwise erroneous.

¶ 39 C. Legal Framework

¶ 40 "Article IX of the 1970 Illinois Constitution generally subjects all real property to taxation." *Eden Retirement Center, Inc. v. Department of Revenue*, 213 Ill. 2d 273, 285 (2004); Ill. Const. 1970, art. IX, § 4 ("Except as otherwise provided in this Section, taxes upon real property shall be levied uniformly by valuation ascertained as the General Assembly shall provide by law."). Nevertheless, Section 6 of article IX of the 1970 Illinois Constitution provides the legislature with the authority to exempt certain property from taxation. *Eden*, 213 Ill. 2d at 285; Ill. Const. 1970, art. IX, § 6 ("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 by law may grant homestead exemptions or rent credits."). As such, " '[i]t is the well settled rule of law in the State of Illinois that all property is subject to taxation, unless exempt by statute, in conformity with the constitutional provisions relating thereto. Taxation is the rule–tax exemption is the exception.' " *City of Chicago v. Department of Revenue*, 147 Ill. 2d 484, 491 (1992) (quoting *Rogers Park Post No. 108, American Legion v. Brenza*, 8 Ill. 2d 286, 289-90

(1956)).

¶ 41 Pursuant to this constitutional authority–and as noted above–the legislature has enacted two property tax exemption provisions that are potentially applicable in this case. First, section 15-40(a)(1) of the Property Tax Code provides that property "used exclusively for *** religious purposes *** qualifies for exemption as long as it is not used with a view to profit." 35 ILCS 200/15-40(a)(1) (West 2008). While the statutory language indicates that a property must be used "exclusively" for an exempt use, courts have consistently recognized that this requirement is met where the property is "primarily" used for such an exempt purpose. *Three Angels Broadcasting Network, Inc. v. Department of Revenue*, 381 Ill. App. 3d 679, 694 (2008); *Children's Development Center, Inc. v. Olson*, 52 Ill. 2d 332, 336 (1972). Moreover, a property's exemption status under this section is determined by considering its primary use, not its ownership. *Faith Christian Fellowship of Chicago, Illinois, Inc. v. Department of Revenue*, 226 Ill. App. 3d 322, 324 (1992); *Village of Oak Park v. Rosewell*, 115 Ill. App. 3d 497, 500 (1983). Nevertheless, it is also clear that "[w]hether property is used for profit depends on the intent of the owner in using the property." *Victory Christian Church v. Department of Revenue*, 264 Ill. App. 3d 919, 922 (1994) (citing *People ex rel. Goodman v. University of Illinois Foundation*, 388 Ill. 363, 371 (1944)).

¶ 42 Second, section 15-125(a) of the Property Tax Code provides that "[p]arking areas, not leased or used for profit ***, 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) (West 2008). Courts have consistently recognized that, pursuant to this provision, parking areas used in association with an exempt use are exempt from taxation only if they are also *owned* by an

exempt institution. *American National Bank and Trust Co. v. Department of Revenue*, 242 Ill. App. 3d 716, 723 (1993); *Faith Christian Fellowship*, 226 Ill. App. 3d at 324-25.

¶ 43 Finally, our supreme court has recognized that "[s]tatutes granting tax exemptions must be strictly construed in favor of taxation [citation], and courts have no power to create exemption from taxation by judicial construction [citation]." *Provena*, 236 Ill. 2d at 388. In addition, it is also understood:

> "The burden of establishing entitlement to a tax exemption rests upon the person seeking it. [Citation.] The burden is a very heavy one. The party claiming an exemption must prove 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. [Citation.] A basis for exemption may not be inferred when none has been demonstrated. To the contrary, all facts are to be construed and all debatable questions resolved in favor of taxation [citation], and every presumption is against the intention of the state to exempt property from taxation [citation]. If there is any doubt as to applicability of an exemption, it must be resolved in favor of requiring that tax be paid. [Citation.]" (Emphasis added.) *Id*. at 389.

¶ 44 D. Discussion

¶ 45 We find that the Department properly concluded that the property was not exempt from taxes in 2008, pursuant to section 15-40(a)(1) of the Property Tax Code and in light of Omega's failure to provide clear and convincing evidence that Mr. Tadros did not use the property with a view to profit.

¶ 46 Again, section 15-40(a)(1) mandates that the property "qualifies for exemption as long as

it is not used with a view to profit." 35 ILCS 200/15-40(a)(1) (West 2008). Moreover, "[w]hether property is used for profit depends on the intent of the owner in using the property." *Victory Christian Church*, 264 Ill. App. 3d at 922. Thus, while Omega may use the property for religious purposes, we must focus on the intent of Mr. Tadros in using the property.

¶ 47 Our supreme court has long recognized that "[i]f real estate is leased for rent, whether in cash or in other form of consideration, it is used for profit" (*People ex rel. Baldwin v. Jessamine Withers Home*, 312 Ill. 136, 140 (1924)), and that "[w]hen money is made by the use of the building, that is profit" (*id*. at 141). See also *Turnverein "Lincoln" v. Board of Appeals of Cook County*, 358 Ill. 135, 144 (1934) ("if property, however owned, is let for a return, it is used for profit"). Courts have more recently recognized that, where property is owned by a private, for-profit party and leased to a religious organization and used for religious purposes, that property is not exempt from taxation in light of the property *owner's* evident use of the property for profit. *American National Bank*, 242 Ill. App. 3d at 724; *Victory Christian Church*, 264 Ill. App. 3d at 922-23. Indeed, this court specifically reasoned that "[t]o decide otherwise would allow any private property not entitled to exemption to become tax exempt merely by leasing it to a religious or school organization." *Id*. at 923.

¶ 48 Here, the evidence presented at the administrative hearing established that Mr. Tadros was in the business of buying, selling, and renting residential, commercial, and retail properties. Indeed, his purchase of the property at issue here was part of a "1031 exchange" in which he was allowed to defer recognizing capitol gains on other properties he had recently sold. Mr. Tadros was not himself exempt from taxation for any reason, and he rented the property to Omega for $3,500 per month. Moreover, his tax returns indicated that this rent generated a net profit of $26,831 in 2008

and $4,273 in 2009. Mr. O'Dwyer testified that by leasing the property to Omega at this amount, Mr. Tadros was earning an overall 3% annual return on his investment. We find that these facts alone support the Department's conclusion that a property tax exemption was not warranted in this matter, as they reflect Mr. Tadros' intent to use the property with a view to profit.

¶ 49 Nevertheless, Omega contends that such a conclusion: (1) misstates and ignores applicable law; and (2) fails to account for other evidence that Mr. Tadros did not intend to profit from his ownership and use of the property. We address each contention in turn.

¶ 50 First, we reject Omega's contention that resolving this matter on the basis of the above cited authority would ignore other legal authority supporting its position. Specifically, Omega notes that in *University of Illinois Foundation*, our supreme court recognized that leasing a property does not necessarily destroy its tax-exempt status, it is the primary use of a property that is controlling, and "the mere fact that income is incidentally and secondarily derived from its use for a nonexempt purpose does not necessarily render the property taxable." *University of Illinois Foundation*, 388 Ill. at 370-71. Omega also cites to *Olson*, where the court again indicated that if the primary use of a property "is not for the production of income but to serve a tax-exempt purpose the tax-exempt status of the property continues though the use may involve an incidental production of income." *Olson*, 52 Ill. 2d at 336.

¶ 51 Omega uses these cases to argue that the intent of Mr. Tadros is "benevolence, not profit. Mr. Tadros' primary use is not the production of income but to serve a tax-exempt purpose to keep Omega in its church." As such, Omega argues that Mr. Tadros' lease of the property "did not destroy the tax-exempt status of the leased property, even if that letting produces a 'return' to Mr. Tadros." Therefore, a tax exemption for the property should not be denied on the basis of any

incidental profit Mr. Tadros made by leasing it to Omega.

¶ 52 We find Omega's reliance upon this line of cases to be misplaced. In both *University of Illinois Foundation* and *Olson* the court considered situations where tax-exempt, not-for-profit entities themselves earned incidental income from properties that were primarily used for an exempt purpose. *University of Illinois Foundation*, 388 Ill. at 374-75; *Olson*, 52 Ill. 2d at 334-36. We are not aware of any cases applying this reasoning outside of that context. Moreover, that is obviously not the context presented here, where the property owner–Mr. Tadros–is not a tax-exempt, not-for-profit entity. Indeed, it is important to note that in both of these decisions, our supreme court discussed incidental *income* accruing to a non-profit, tax-exempt entity, not *profit* earned by a private landowner.

¶ 53 We also reject Omega's contention that sufficient evidence was presented to establish that Mr. Tadros did not intend to profit from his ownership and use of the property. For example, Omega cites to the evidence that Mr. Tadros originally purchased the property with the purpose of helping the church to remain at its current location. Additionally, Omega notes the evidence that Mr. Tadros only charged the church a rental amount that was affordable, he was lenient with the timing of rent payments, and that the rental amount was two to three times lower than the market rate.

¶ 54 Omega also notes that Mr. Tadros did not take any depreciation deductions on his tax returns, and that any purported profit reflected on his tax returns does not account for the fact that reserves must be maintained to pay for ongoing maintenance and repairs to the property. Finally, Omega cites to portions of Mr. O'Dwyer's testimony in which he states that Mr. Tadros is not actually making a profit due to the "opportunity cost of money" and that he is, in effect,

"subsidizing" the church. In sum, Omega contends that the evidence actually shows that Mr. Tadros is merely attempting to cover his costs as he seeks to help the church stay at its current location.

¶ 55 We do not find these arguments convincing. Mr. Tadros himself never testified that he did not intend or desire to make a profit on his ownership or use of the property. Instead, he specifically testified that he "didn't want to lose any money," and agreed that he chose to buy and lease the property to Omega despite the fact that he could have purchased some other property that would have "produced a lot *better return* on my investment." (Emphasis added.) Moreover, there was evidence that it was anticipated that Omega's finances could improve to the point that the property would be repurchased from Mr. Tadros. No evidence was presented as to what the purchase price might be, or whether Mr. Tadros intended to make a profit on such a transaction.

¶ 56 Additionally, Mr. O'Dwyer's testimony was somewhat contradictory. Clearly, his testimony reflected his opinion that Mr. Tadros was charging a rental rate that was below market. He also testified that Mr. Tadros was not making a profit due to the "opportunity cost of money," and that Mr. Tadros was "subsidizing" the church. In another portion of his testimony, however, Mr. O'Dwyer indicated that this rent still provided a 3% annual rate of return–even after accounting for the need to create and maintain a reserve fund.

¶ 57 Furthermore, there was never any specific evidence presented regarding the exact amount Mr. Tadros could have taken as a depreciation deduction or exactly how much money he needed to hold in reserve for future maintenance and repairs. Exemptions have previously been denied where the applicant failed to provide financial information of sufficient specificity. *Three Angels*, 381 Ill. App. 3d at 697.

¶ 58 In sum, Omega had the heavy burden to provide clear and convincing evidence that the

property qualified for a property tax exemption. *Provena*, 236 Ill. 2d at 389. In this case, that included a burden to present clear and convincing evidence that Mr. Tadros did not intend to use the property with a view to profit. The evidence Omega presented below might well have established that Mr. Tadros did not intend to maximize his profit. However, after conducting a *de novo* review we find that the Department did not err in finding that the evidence did not clearly and convincingly establish that Mr. Tadros had no intention to use the property for any profit. At best, the evidence raised debatable questions and doubts as to applicability of a property tax exemption, and such questions and doubts "must be resolved in favor of requiring that tax be paid." *Id*.

¶ 59 Thus, we conclude that the Department did not err in rejecting Omega's request for an exemption for 2008 with respect to the *entire* property pursuant to section 15-40(a)(1) of the Property Tax Code. We, therefore, need not further consider the Department's additional conclusion that because the property was not owned by Omega, those portions of the property used for parking were also ineligible for an exemption under section 15-125(a) of the Property Tax Code.

¶ 60 III. CONCLUSION

¶ 61 For the foregoing reasons, the judgment of the circuit court is affirmed and the Department's administrative decision is confirmed.

¶ 62 Circuit court affirmed; Department's decision confirmed.

¶ 63 JUSTICE CUNNINGHAM dissents:

¶ 64 I respectfully dissent from the holding of the majority. The facts of this case highlight the maxim that the majority holding in a case is not necessarily the *just* holding.

¶ 65 I agree with the majority's conclusion that a *de novo* standard of review is appropriate in this case. As such, our appellate review must be done in an independent manner in which we look at the

evidence with fresh eyes, rather than defer to the trier of fact. In light of that standard, under the facts, circumstances and certain established legal principles, I believe that the Administrative Law Judge (ALJ) acting on behalf of the Department of Revenue (Department) reached an erroneous conclusion in this case. I would reverse the Department and the circuit court and find that Omega is entitled to the tax exemption it seeks.

¶ 66 In this case, the plaintiff, Omega, has been operating as a church for well over 60 years. During all of those years, Omega qualified as a tax exempt entity and availed itself of that benefit. As the majority points out, Omega is no longer the owner of the property which it occupies, so it theoretically is not entitled to bring this action for tax exemption. However, while the Department noted that Omega is not the owner of the property, it nevertheless went on to adjudicate Omega's exemption application. I agree with the majority's conclusion that any standing issue regarding Omega's right to bring this action has been forfeited for all of the reasons discussed in the majority opinion. Further, Omega is clearly a party in interest, and is adversely affected by the Department's ruling, regardless of the actual ownership of the property. See *Greer v. Illinois Housing Development Authority*, 122 Ill. 2d 462, 492-93 (1988).

¶ 67 Omega's financial circumstances changed dramatically through no fault of its own. It became the victim of changing times and demographics. Specifically, its membership shrank as the neighborhood changed and the church saw a significant impact on the financial support which its remaining members could provide. Although the church struggled to remain viable, over the years, it had acquired additional property and a commensurate mortgage. Its financial situation eventually became untenable. In other words, there came a point when Omega could no longer pay its bills. This sequence of circumstances led to Omega losing its property to bankruptcy; acquisition of that

property by Mr. Tadros; a failed application for tax exemption by Omega; and eventually to the instant appeal. The question which the Department and ultimately this court had to answer, was whether Gerese Tadros was truly an altruistic benefactor who acted for the benefit of Omega *or* whether Omega was just another investment opportunity for Mr. Tadros. The answer to this question, in my opinion, informs the analysis regarding Omega's eligibility for a tax exemption.

¶ 68 The record establishes that in 2006, Omega had run out of financial options and filed for bankruptcy. Testimony also established that a personal friendship existed between the pastor of Omega, Reverend Joseph Henry, and Mr. Tadros' father. Mr. Tadros was in the business of real estate investments and owned other property in the area where the church is located. It is reasonable to infer from the testimony that he was a savvy real estate investor and did not acquire Omega unwittingly. I also believe that it can be inferred from the evidence that he did not have a high expectation of a return on his investment with respect to acquiring Omega as part of his investment portfolio. While the ALJ chose to pick out those portions of the testimony which support his ruling, there was also testimony which established that several altruistic factors influenced Mr. Tadros' decision to acquire the bankrupt Omega. Among those were his father's personal friendship with Omega's pastor Reverend Henry, and a desire to see the church survive. The record supports the inference that Mr. Tadros' real estate investment company had other options which they could have considered if investment was the main goal in acquiring property in the area. Reverend Henry testified that Mr. Tadros indicated that he was not purchasing the Omega property in order to make a profit. There is objective support in the record for that point of view. For example, the rent paid by Omega to Mr. Tadros' company was not market based, but rather was below market and was *based on what Omega could afford*. Omega's circumstances were demonstrably dire and out of the

ordinary. The real estate appraiser who testified as an expert in the administrative hearing noted that property occupied by a church is not typically leased. Rather, a church usually owns the property it occupies. Omega argues that Mr. Tadros stepped in and rescued the church. They further argue that Mr. Tadros' testimony establishes that fact as it shows Omega being treated in an exceptionally lenient manner regarding its financial relationship with Mr. Tadros' company. That is clearly not an ordinary investment relationship.

¶ 69 However, the ALJ who heard the evidence seems to hang his decision on a specific part of Mr. Tadros' testimony, in which Mr. Tadros said "he didn't want to lose [] money." The ALJ also pointed to evidence that Mr. Tadros made a small profit of $4,273 in the 2009 tax year and that Mr. Tadros wanted to gain enough money from the lease agreement to establish a reserve fund for the church. While these facts appear to lend some support to the theory that there may have been a dual purpose for Mr. Tadros' acquisition of Omega, I do not believe that they so clearly established that the property was mainly or solely an investment for Mr. Tadros, thereby favoring taxation. In his finding the ALJ said: "The record forces me to conclude that the subject property is leased with a view to profit, use which is proscribed by [the statute]." This suggests that the ALJ based his ruling on the fact that Mr. Tadros made a small profit on the lease agreement, notwithstanding all of the other factors which support an opposite conclusion. The ALJ did not discuss nor analyze those factors which do not support his ruling.

¶ 70 While the ALJ infers that an analysis of Mr. Tadros' testimony led him to conclude that the motivation for the investment was profit, I believe that the evidence supports the opposite conclusion.

¶ 71 The ALJ chose to view the testimony presented by Omega in a manner which could only

lead to the conclusion which he ultimately reached. It is true that the tenets of statutory construction regarding taxation of real property suggest that property is presumed taxable and it is the tax payer's burden to prove that it is not. However, in this case, I believe Omega met its burden by presenting clear and convincing evidence that Mr. Tadros did not acquire the property to make a profit but, rather, it was an act of benevolence to rescue the church. The ALJ was selective in focusing on which part of the evidence was determinative, and the weight to be given to the evidence which would support his conclusion that Omega was not entitled to a tax exemption.

¶ 72 I believe that Mr. Tadros' testimony clearly demonstrates his intent regarding use of the property. Mr. Tadros testified that he first learned about Omega's financial troubles when he was in a business meeting regarding another matter and heard attorneys discussing the church. He testified that he decided to purchase the property based on "the relationship [his] family has had with the church for the past 20 plus years." The evidence shows that Mr. Tadros' sole reason for purchasing the property was to save the property following the foreclosure proceeding so that Omega could continue to operate its church. In other words, but for Omega's financial troubles, Mr. Tadros would not have purchased the property. In my opinion, this is the most clear and convincing evidence of Mr. Tadros' intent regarding use of the property. In reaching their conclusions, the ALJ and the majority in this court partially relied on the fact that rent from leasing the property generated a relatively small profit in 2008 and 2009. However, I believe that this fact is ancillary to the reason that Mr. Tadros purchased the property in the first place.

¶ 73 We should not put greater emphasis on the *results* of Mr. Tadros' purchase rather than the *motivation* for Mr. Tadros' purchase. For example, if rent from leasing the property had resulted in losses for Mr. Tadros in 2008 and 2009 instead of profits, would that have shown that he did *not*

intend to profit from use of the property? I believe that the evidence regarding the profits earned in 2008 and 2009, and Mr. O'Dwyer's testimony that Mr. Tadros was earning a 3% annual return on his investment, have little effect, if any, on Mr. Tadros' intent regarding use of the property. What *does* demonstrate Mr. Tadros' intent is his testimony in which he stated that the rent of $3,500 that Omega was charged was based solely on what Omega could afford to pay. Mr. Tadros testified that he would have charged Omega less if necessary, and that he would have waived rental payments altogether if Omega could not afford to pay. The rent charged was in no way influenced by a desire to gain a profit from the purchase of the property. Thus, the fact that the rent generated a relatively small profit is insignificant. In my opinion, the evidence clearly and convincingly shows that Mr. Tadros' intent in purchasing the property and its use was entirely altruistic.

¶ 74 Certainly nothing in the record suggests that Omega's mission or its underlying ministry as a church changed along with its financial status. It has operated as a tax exempt church for over 60 years. If we accept the basic principle that the question of standing is no longer an issue and that Omega is the real party in interest which will benefit from the tax exemption, then the ALJ's ruling makes little sense. The status of the church on the most basic level did not suddenly change because it no longer owned the land on which it stands. If anything, this dramatic reversal of fortune supports the need for the tax exemption more than ever. While the statute does not directly provide for such an interpretation, I believe it is one more inference which is supported by the evidence. In other words, Omega has enjoyed tax exempt status as a church for 60 years. The only thing that has changed is that their financial situation has considerably worsened. It hardly seems *just* to remove their tax exemption now, when they seem to need it most. I would reverse the rulings of the Department and the circuit court of Cook County, and find that Omega is entitled to the tax

exemption it seeks.