

TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE: Islamic Center of Nashville)	Davidson County
Property ID: 114 00 0 146.00)	
)	
<i>Claim of Exemption</i>)	Exempt No. 80212

Initial Decision and Order

Statement of the Case

This is a taxpayer appeal of an exemption application effective date determination by the designee of the State Board of Equalization ("State Board"). The taxpayer applied to the State Board for exemption of the subject property on February 26, 2014. On May 19, 2014, the State Board designee approved the exemption application, effective January 1, 2014. The taxpayer timely appealed the effective date determination.

The undersigned administrative judge conducted the hearing on January 20, 2015 in Nashville. Taxpayer president Rashed Fakhruddin, former president Abdul Barre, and attorneys Rob McGuire, Esq. and Dina Shabayek, Esq. appeared on behalf of the taxpayer. John Cantrell and Jason Bobo, Esq. appeared on behalf of the Davidson County Property Assessor.

Findings of Fact and Conclusions of Law

The subject property has been used as a religious school from 1995 through the present. Effective July 3, 1996, the State Board granted exemption to all of the subject's improvements and 50% of its land. Around August of 2008, a new school building construction project commenced. The new school building opened in December 2008.

Due to sincere religious doctrinal concerns regarding interest bearing loans, the taxpayer opted not to pursue conventional financing for the school construction project. As an alternative to conventional financing, the taxpayer entered into an arrangement with Devon Bank, an out-of-state, for-profit financial services provider. The taxpayer's intention was to acquire the capital needed to pay for the school construction project without necessitating repayment of an interest bearing loan.

The taxpayer described the arrangement with Devon Bank as follows. The taxpayer sold the subject property to Devon Bank on or about August 13, 2008 for \$900,000. The proceeds were used to pay for the school construction project. Simultaneously, the taxpayer entered into an agreement to buy the subject back from Devon Bank for \$900,000 with a monthly payment schedule extending into the year 2028.

The transfer of title to Devon Bank was evidenced by an August 13, 2008 warranty deed.¹ On October 8, 2008, the Davidson County Assessor returned the subject to the tax rolls as of the date of the deed. On December 1, 2008, classes began in the new school building.² Almost five years later, the taxpayer paid off the entire remaining balance of the purchase price and re-acquired legal title to the subject via a quitclaim deed executed by Devon Bank on October 25, 2013.³

On February 26, 2014, the taxpayer filed an application with the State Board in hopes of reviving the previously granted exemption the assessor's office had terminated due to the August 13, 2008 transfer of legal title. The State Board designee approved exemption of the property in its entirety. On appeal, the taxpayer challenged only the designee's exemption effective date determination of January 1, 2014.

¹ More precisely, the grantee was DB Client Service LLC #204, an entity controlled by Devon Bank.

² The existing structures previously used for the same purpose were removed during the project.

³ The quitclaim deed was subject to "general real estate taxes for 2012 and subsequent years."

The taxpayer emphatically averred that it *did not own* the subject property from August 13, 2008 through October 24, 2013. The taxpayer described the documents related to the Devon Bank purchase agreement as having the following effect on ownership:

....All the guarantees gave ICN [the taxpayer] use of the property but not ownership. Only when ICN made its final payment would Devon Bank then convey ownership of the property to ICN.

The documents make it quite clear that ICN had *no ownership* interest in the [subject property] until such time as they paid Devon Bank \$900,000. If Devon Bank simply sold the property they would be in breach of a contract with ICN but there is no doubt that Devon Bank owned the property lock, stock and barrel. As was described in the testimony, ICN concluded that in actuality their transaction with Devon Bank was so close to [being an interest bearing loan arrangement] as to be indistinguishable and accelerated payment to acquire the property more quickly. This is reflected as Devon Bank conveyed the property to ICN on October 24, 2013... Prior to that date, the land, and the structures on the land, were owned entirely by Devon Bank.

Had the taxpayer never previously applied and been approved for exemption of the subject parcel, Tenn. Code Ann. § 67-5-212(b)(3)(A) would unambiguously dictate an effective date of January 1, 2014 due to the filing of the exemption application in 2014 prior to May 20, the persistent historical exempt physical use and occupancy, and the fact that the taxpayer had re-acquired legal title on October 25, 2013.

Despite its averment that it did not own the subject prior to October 25, 2013, the taxpayer urged the State Board to grant exemption retroactively for a three year period prior to the date of application per Tenn. Code Ann. § 67-5-212(b)(3)(B). The taxpayer characterized the subject as property acquired to “replace its own exempt property” under this subsection. The taxpayer argued the subject was a functional replacement for operations occurring at a portion of one of its other locations and/or a replacement for itself.

Tenn. Code Ann. § 67-5-212(b)(3)(B) provides,

If a religious institution acquires property that was duly exempt at the time of transfer from a transferor who had previously been approved for a religious use exemption of the property, or if a religious institution acquires property to replace its own exempt property, then the effective date of exemption shall be three (3) years prior to the date of application, or the date the acquiring institution began to use the property for religious purposes, whichever is later. The purpose of this subdivision (b)(3) is to provide continuity of exempt status for property transferred from one exempt religious institution to another in the specified circumstances. For purposes of this subdivision (b)(3), property transferred by a lender following foreclosure shall be deemed to have been transferred by the foreclosed debtor, whether or not the property was assessed in the name of the lender during the lender's possession.

It is axiomatic that exempt property must be not only occupied and used by an exempt institution, but also *owned* by an exempt institution in order to qualify for exemption; further, such exemptions are non-transferable.⁴ Under State Board precedent, legal title is dispositive of ownership for exemption eligibility purposes except where an arrangement akin to the temple organizer's trust in *Kopsombut-Myint Buddhist Ctr.*⁵ has been asserted and proven.⁶ Here, the

⁴ Tenn. Code Ann. § 67-5-212(a)(1) and (b)(1); *Bartlett Patterson Corporation* (Initial Decision & Order, Greene County, issued December 16, 2013) (where qualifying occupancy and use began well before January 1, 2013 and where exemption application filed prior to May 20, 2013, exemption effective only upon October 10, 2013 acquisition of title); *Knox County Humane Society* (Initial Decision & Order, Knox County, issued January 2, 2013) (where use began in January 2011 and where exemption application filed prior to May 20, 2013, exemption effective only upon March 24, 2011 acquisition of title); *Baptist Memorial Hospital* (Initial Decision & Order, Shelby County, issued June 2, 2014) (change in ownership structure terminated exemption and triggered need to re-apply for exemption despite continuous qualifying use).

⁵ *Kopsombut-Myint Buddhist Ctr. v. State Bd. of Equalization*, 728 S.W.2d 327, 332-34 (Tenn. Ct. App. 1986).

⁶ *The Central Band of the Cherokee* (Final Decision & Order, Lawrence County, issued July 31, 2012) (Assessment Appeals Commission conditioning exemption on deed reformation of non-qualifying legal title and further review by State Board designee); *God's Storehouse, Inc.* (Initial Decision & Order, Lawrence County, issued July 24, 2013) (denying exemption where legal title held by a nonexempt estate and property under a 99-year lease with exempt institution for nominal consideration but with option to terminate prior to end of term); *Wesley Highland Nursing Homes Inc.* (Initial Decision & Order, Shelby County, issued November 18, 2011) (denying relief on appeal of taxes imposed on previously-exempt property following transfer of legal title, where title transfer characterized as a mere financing mechanism by prior title holder); *Bridge Community Church, Inc.* (Initial Decision & Order, Jackson County, issued February 14, 2011) (denying exemption where legal title held by individual under contract for deed arrangement with exempt institution); *Lord's Prayer Baptist Church* (Final Decision & Order, Davidson County, issued October 21, 1992) (Assessment Appeals Commission denying exemption based on non-qualifying legal title where insufficient evidence presented to support taxpayer's contention that individual held property in trust for the religious institution claiming exemption).

transactional documents and the averred period of Devon Bank's ownership prevent characterization of the arrangement as an analog to such a trust.

Where qualifying occupancy and use of property has begun within the three year look-back period permitted under Tenn. Code Ann. § 67-5-212(b)(3)(B) but prior to actual ownership by the exempt institution applicant, an applicant's exemption relates back only as far as the date on which the property was acquired.⁷ The only exception to the ownership requirement is in the case of "property transferred by a lender following foreclosure" that meets the criteria of Tenn. Code Ann. § 67-5-212(b)(3)(B). Although Devon Bank acquired the subject through outright purchase rather than foreclosure, the taxpayer urged the subject was analogous to "property transferred by a lender following foreclosure" and entitled to treatment as such.

The administrative judge is neither insensitive to the taxpayer's predicament nor unmindful of the Tennessee courts' policy of liberally construing exemption statutes in favor of exempt institutions.⁸ Prior precedent promotes discernment of "the substance of an arrangement rather than its form" in the construction and application of Tenn. Code Ann. § 67-5-212.⁹

Despite the taxpayer's post-hearing document submissions, the substance of the transaction remained elusive due to the record's lack of critical details. In particular, the record did not include the lease between Devon Bank and the taxpayer.

The purchase agreement payment schedule included in the record showed that the 240 scheduled monthly payments to Devon Bank under the purchase agreement totaled exactly

⁷ *Cedar Point Church* (Initial Decision & Order, Blount County, issued February 14, 2014).

⁸ *Christ Church Pentecostal v. Tennessee State Bd. of Equalization*, 428 S.W.3d 800, 807 (Tenn. Ct. App. 2013) (observing that "[u]nlike similar exemptions granted in other states, the exemption granted by the Tennessee statute is construed liberally in favor of the religious, charitable, scientific or educational institution," but ultimately holding that certain portions of exempt religious institution's property put to commercial use were not exempt despite their importance to religious institution's sincere religious outreach program purposes).

⁹ *Kopsombut-Myint Buddhist Ctr.*, 728 S.W.2d at 334. See also *Tennessee District Council of the Assemblies of God, Inc.* (Initial Decision & Order, Williamson County, issued February 16, 2007) (disregarding lease between exempt institution parent and exempt institution subsidiary entities as an internal accounting arrangement).

\$900,000, the same amount Devon Bank paid the taxpayer. In other words, the purchase agreement only provided for Devon Bank's return *of* investment. Taxpayer's Exhibit 4 referenced not only a purchase agreement, but also a "...lease, pursuant to which Devon will sell and permit certain uses of the [subject property] to [the taxpayer], and has agreed to accept payments under these Agreements..." The unIntroduced lease was presumably the source of Devon Bank's return *on* investment.

In the purchase payment schedule, the monthly payments gradually increased from the initial scheduled purchase payment of \$1,560.52 to a final purchase payment of \$7,384.83 scheduled for August 13, 2028 in the same manner as principal reduction escalation on an amortization table. This, coupled with a portion of a 2010 "End-of-Year Loan Statement" the taxpayer submitted while the situation was still under review by State Board staff, indicated that Devon Bank was achieving the financial equivalent of a 7.83% annual rate mortgage product structured with equal monthly payments of \$7,433.02. It would follow that the portion of each month's revenue attributed to rent would have gradually decreased from roughly \$5,872 in the first month to \$48 for the final payment in the 240th month. As such, the taxpayer might have paid Devon Bank as much as \$342,065 in designated rent during the period of August 13, 2008 through October 25, 2013.¹⁰

Respectfully, the administrative judge cannot conceive how real property *generating rent for a for-profit owner* could qualify for exemption under the same statute that *disqualifies* property of *an exempt institution owner* who charges another exempt institution any more rent than "a reasonably allocated share of the cost of use, excluding the cost of capital improvements, debt service, depreciation and interest..."¹¹

¹⁰ The "1098 Reportable Interest" shown on the 2010 "End-Of-Year Loan Statement" was \$56,653.91.

¹¹ Tenn. Code Ann. § 67-5-212(a)(1); *AMS, LLC* (Initial Decision & Order, Knox County, issued June 13, 2014).

Due to recent decisions allowing retroactive exemption where the taxpayer had *both* (1) *previously filed a successful exemption application for the parcel in question and* (2) *met all three of the ownership, occupancy, and use exemption requirements for the time period in question,*¹² the administrative judge finds that the appropriate effective date of exemption is October 25, 2013.

Because the disqualifying Devon Bank lease prevented exemption prior to October 25, 2013 in any event, the administrative judge finds it unnecessary to decide if the subject constituted property described in Tenn. Code Ann. § 67-5-212(b)(3)(B) or whether the ownership exception (“property transferred by a lender following foreclosure”) therein signals a legislative intent to disregard the ownership requirement for the purposes of Tenn. Code Ann. § 67-5-212(b)(3)(B) where a lender held legal title in a context other than foreclosure.

The administrative judge regards this outcome particularly unfortunate in light of the facts that the property has been continuously occupied by an exempt institution and physically used solely for exempt religious educational purposes throughout the relevant time period. Regrettably, the administrative judge “cannot disregard or rewrite the conditions for property tax exemption imposed by law to accommodate even the worthiest of causes.”¹³

¹² *Cowan Street Baptist Church* (Initial Decision & Order, Davidson County, issued May 6, 2014), *aff'd*, *Cowan Street Baptist Church* (Final Decision & Order, Davidson County, issued December 5, 2014) (effective date of exemption for late exemption application retroactive to date of parcel consolidation where previously-exempted parcel and parcel that had never been approved for exemption were consolidated and survivor parcel number was the same as the original duly exempt parcel number).

¹³ *ICM Foundation* (Initial Decision & Order, Davidson County, issued October 8, 2004) (finding exemption precluded by sale-leaseback arrangement where property owned by an exempt institution organized as a “financial and administrative support vehicle” for its exempt institution lessee and where imputed rent exceeded predecessor statute exempt institution lease arrangement rent cap of one dollar “plus a reasonable service and maintenance fee.”)

Order

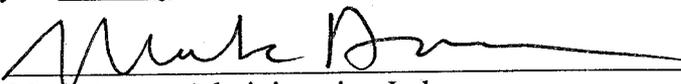
It is, therefore, ORDERED that the effective date of exemption is October 25, 2013.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

The result of this appeal is final only after the time expires for further administrative review, usually seventy-five (75) days after entry of the Initial Decision and Order if no party has appealed.

ENTERED this 9th day of February 2015.


Mark Aaron, Administrative Judge
Tennessee Department of State
Administrative Procedures Division
William R. Snodgrass, TN Tower
312 Rosa L. Parks Avenue, 8th Floor
Nashville, Tennessee 37243

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing Order has been mailed or otherwise transmitted to:

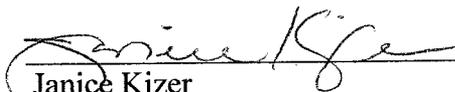
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This the 9th day of February 2015.



Janice Kizer
Department of State
Administrative Procedures Division