

Status: Chapter 94-353 s. 22, L.O.F. modified section 196.011, F.S., retroactive to January 1, 1992 providing a limited exception to the application requirement for religious property.

OPN 91-0068

Nov 20, 1991

The Honorable Jim Ford
Brevard County Property Appraiser
Post Office Drawer "O"
Titusville, Florida 32781-0429

RE: Exemption; Religious; Failure to File Application
Sections 196.011, 196.151, 196.193(5), F.S.

Dear Mr. Ford:

Your letter dated April 12, 1991 was referred to me for review and response. In your letter you request advice concerning a church which, through an unfortunate series of events, failed to file the application for religious exemption. With your letter you state the following facts.

FACTS

On September 28, 1984, the XXX purchased the parcel. The site was vacant at that time.

On February 1, 1985, the church timely filed an application for tax exemption on this site. The property appraiser denied the exemption request as the site was vacant and not in use. The church paid the taxes for 1985.

On January 2, 1986, the property appraiser mailed an application for exemption to the church with a letter explaining the use of the application, if applicable. No application was filed for tax year 1986. This is most likely due to the site still being vacant.

For tax year 1987, the property appraiser mailed another application to the church. The property appraiser maintained a listing of all applications mailed for the tax year and this church name is located in it. On February 13, 1987, the application was filed with the property appraiser. On February 17, 1987, the property appraiser wrote to the church returning an original document to the church which had been sent to the property appraiser's office by mistake.

In section A(9) of the application, the church stated that plans for the new church building had been submitted to Brevard County and the State of Florida and that outdoor worship services were occasionally conducted on the property. On February 26, 1987, the church treasurer telephoned the property appraiser's office and noted that he was told that the property would be inspected and the church would be sent notification of the appraiser's action by mail. The church furnished your office a copy of this note made relative to this conversation which was found in their files.

You state at this point is when the problem appears to begin. On June 1, 1987, your office notified the church on Form DR-490 the "Notice of Disapproval of Application for Property Tax Exemption." No appeal was made to the Property Appraisal Adjustment Board. These notices are mailed by certified mail with return receipt requested, and a search by your office fails to find the return receipt from the postal authorities. The property appraiser therefore has no proof of delivery.

Parenthetically, you have provided a copy of Hausman v. First Baptist Church of Pine Hills, 513 So.2d 768 (Fla. 5th DCA, 1987), in which the court on October 8, 1987 stated that an applicant church was entitled to the religious exemption on an unimproved tract where the church sporadically used the land for religious purposes.

You also stated to me verbally in a conversation on August 15, 1991 that the records may have been lost, possibly in the move of the office that occurred around December, 1986.

The issue is whether an exemption may be granted retroactively where there is no evidence of the application as required by section 196.011, F.S., or of granting the exemption.

This land was taxed for 1987, the taxes were not timely paid, and Tax Certificate Number 88/3759 issued. The mailing address remained "P.O. Box 881, Melbourne, FL 32935-0881."

For tax years 1988, 1989 and 1990, the property appraiser's records show no applications for exemption. For 1988, taxes were not paid and Tax Certificate Number 89/3979 was issued on the property as vacant land. For 1989, taxes were not paid and Tax Certificate Number 90/4455 was issued on the property which included the new church building. Your permit records show that the original building permit was issued on August 27, 1987, and finalized on January 28, 1988. Therefore, the building was taxable as of January 1, 1989.

In 1990, the holder of Tax Certificate Number 88/3759 for 1987 taxes made application for tax deed and redeemed the certificate issued for tax years 1988 and 1989, which established Tax Deed File Number 90-207.

The church contacted the tax collectors office after the church property was posted by due process of law and stated this was the first they knew about any taxes due on the property and had not received anything in the mail concerning same over the years in question. The collector's office had the church contact your office, at which time your office began its investigation and due to what appeared to be a complex case, you requested that the tax deed process be held up as you would need time to check out every detail possible for the several years in question. It was your opinion that the church should be given this delay to give them and this office the time to find anything favorable to their position.

It appears most of this problem has been caused by the mailing address for the church. The church changed their address with the post office to the church location at "1001 N. Pinehurst, Melbourne, Florida 32940." The property appraiser finds no record of an address change request until January 29, 1991.

None of the prior years correspondence or applications had the new address. You assume the change took place around the first of 1988 when the building was completed. This office and the tax collector purged its return mail files and the 1988 and 1989 tax bills were returned, and the "TRIM" notice (notice of proposed property taxes) for 1989 was returned.

There are two extenuating circumstances present in this case. First of all, your office was forced to rapidly move from the courthouse building after the building was contaminated by airborne asbestos fibers. You state there were some items lost in that rapid relocation to Searstown Mall and that is likely what happened with the church's original application. The second problem was the fact that all correspondence and notices were going to the wrong address and the church did not know its exemption was never approved and processed. This resulted in their failure to act to prevent the sale of tax certificates for several years.

ISSUES

You therefore request advice on substantially the following questions:

1. Would the church be entitled to the exemption for 1987 based on the facts outlined above for tax year 1987?
2. Would the application timely filed in 1987 be adequate for 1988, and should the property appraiser have sent the church a renewal card for the exemption, even though the exemption was denied in 1987?
3. From the facts presented, does the address problem and mail returns to the property appraiser and the tax collector have any bearing on the exemption entitlement?

ANALYSIS

If the denial of the exemption for which application was timely filed for the tax year 1987 was mailed to the taxpayer on Form DR-490 "Notice of Disapproval of Application for Property Tax Exemption", this triggered the taxpayer's duty to exhaust

administrative remedies. Cf. Blake v. R.M.S. Holding Corp., 341 So.2d 795 (Fla. 3d DCA 1977). This opinion does not state that failure to notify a taxpayer of the denial of an exemption entitles the taxpayer to be granted the exemption. The amendment of the statutes to require the property appraiser to notify the taxpayer of the denial of the exemption would be for the purposes of ripening the taxpayer's right to come to the property appraiser under section 194.011(2), F.S., to go to the county commission or under section 194.034, F.S. to the PAAB or to the circuit court.

There is no indication that the property appraiser's action worked an estoppel to assess and tax the property as other than religious property. Id.

The requirement of notification to the taxpayer that his exemption has been denied is for the purpose of permitting the taxpayer the opportunity to petition the PAAB (now the VAB) for a review of his entitlement to the exemption. Sections 193.462(2), 196.151 and 196.193(5), F.S., all provide that the property appraiser shall notify the taxpayer of the right to appeal to the PAAB and the time frames for doing so. The clear intent of the sending of the notice is to afford the opportunity to pursue the matter with the PAAB/VAB. If the normal course of business is to mail the denial then there may be set up a presumption of mailing. Since the property appraiser's office cannot establish it was mailed, in the ordinary course of business there may be set up a presumption it was not mailed.

Section 197.332, F.S., states that all persons are held to know that taxes are due. Section 197.122, F.S., states that any error of omission or commission can be cured at any time. In my opinion the act of mailing the denial to the taxpayer is a ministerial act and failure to do so would be an error of omission or commission.

In Markham v. Moriarty, 16 FLW D400 (Fla. 4th DCA 1991), the court considered and rejected an allegation that an assessment notice violated due process in that it failed to notify the taxpayer that it was required to bring an action contesting the imposition of taxes within 60 days of certification of the tax

rolls. The court considered section 194.171, F.S., as a non-claim statute with attributes of a self-executing statute of limitation. Therefore, the assessment notice or tax notice would constitute good notice of the right to bring an action in circuit court contesting the imposition of taxes.

QUESTION 1

Your first question is answered in the negative. In the instant case, the notice of proposed property taxes apparently contained taxes calculated based on a denial of the religious exemption. The 1987 notice of proposed property taxes was mailed and not received by the taxpayer.

The problem you have is that prior to the time the notice of proposed property taxes was mailed, the notice of denial of the exemption was mailed. Your office does not have the certified mail return receipt. Therefore, you have no proof of delivery of the denial of the religious exemption for 1987. If you assume there was no mailing or delivery, your question is therefore apparently whether the failure to mail such notice would render the property entitled to the exemption for 1987, which is your first question. The question is answered in the negative.

QUESTION 2

In the instant case, the certification of the tax roll is the event which triggers the elapse of the 60 day period, not the denial, or the communication of denial to the taxpayer.

Your second question is also answered in the negative. Since the exemption was denied in 1987, (even if it is assumed that the notice of denial was not communicated), apparently because the land was still vacant, this would not permit the renewal of said exemption for the 1988 year under sections 196.011(3), (4) and (5), F.S. The fact that the tax roll does not reflect the exemption is the best evidence that it was not granted.

QUESTION 3

Your third question is also answered in the negative. The failure to correctly address and mail the exemption applications or denials to the correct address has no bearing upon the entitlement to the exemption. Florida law does, however, permit the revisitation of an exemption after the fact where postal error has occurred (section 196.011(7), F.S.) or where the exemption was granted, entitlement to the exemption exists but through some other error of omission or commission it was not granted on the tax roll. See section 197.122, F.S., (1991) and rule 12D-13.006(1)(a)1., F.A.C. However, these statutes require that the religious exemption has been timely applied for in the first year in which the entitlement to the exemption existed. See sections 196.011(1) and (3), Florida Statutes. Unfortunately, these circumstances do not appear in the facts you have described.

The church here applied for the year 1987 but did not have the church building in place, and apparently might have been entitled to the exemption, had the Hausman v. First Baptist Church of Pine Hills case been decided earlier in 1987, since it did apparently conduct occasional worship in 1987.

CONCLUSION

In the instant case, the notice of proposed property taxes apparently contained taxes calculated based on a denial of the religious exemption. In the instant case, the certification of the tax roll is the event which triggers the elapse of the 60 day period, not the denial, or the communication of the denial, to the taxpayer.

Further, in AGO 91-31, the Attorney General cited a long line of cases that state that the certification of the tax roll effects a presumption of correctness and precludes further exercise of judgment in whether to grant or deny an exemption. This determination is a matter of judgment. See Underhill v. Edwards, 400 So.2d 129 (Fla. 5th DCA 1981). Thus, since this case did not involve a clerical or posting type of error in which the exemption was granted but not posted, the exemption may not now be granted. The Department has no authority to grant this type of refund.

Since you state your records relating to this case were moved from the courthouse and may have been destroyed thus accounting for the lack of record of the application, you request these extenuating circumstances to be considered. It also appears the church has no record of having filed the application. In this situation with no documentation to support granting the exemption, the presumption of correctness would prevail and the party having the burden of proof, the party claiming the exemption, would not. The tax roll is a document that reflects the exemption is not granted. There is no authority in the law to issue a correction to the roll to grant the exemption.

In summary, Florida law is well-established that action in circuit court within 60 days of certification of the tax roll for collection bars the revisitation of whether an exemption should have been granted. This also is based on the taxpayer's failure to seek review by the property appraisal adjustment board (now value adjustment board) within 25 days of the mailing of the TRIM notice or earlier within 30 days of the mailing of the denial. There is no law to the effect that failure to mail the denial would require granting the exemption.

You state that tax certificates have been sold on all of these lands since the taxes were not paid for in a year. You state that the building was taxable as of January 1, 1989. A tax certificate has been issued for the 1989 tax year.

In sum, the unfortunate situation you describe cannot be resolved in favor of granting the exemption under the provision of Florida law, currently on the books. I trust that the above answers your questions. If we may be of further assistance, please advise.

Sincerely,

J. Keller
Assistant General Counsel
Office of General Counsel

SJK/bsc

