



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 24, 1996

The Honorable Harvey Hilderbran
Chair
Human Services Committee
Texas House of Representatives
P.O. Box 2910
Austin, Texas 78768-2910

Letter Opinion No. 96-062

Re: Whether a church is entitled to an exemption from ad valorem taxes on property that it purchases in the middle of the tax year (ID# 36358)

Dear Representative Hilderbran:

You ask whether real property that a church purchased in May to serve as the site for its church services is exempt from ad valorem taxation for the remainder of the tax year.¹ A tax year runs from January 1 through December 31. We conclude that the church's property is not exempt from taxation in the situation you describe.

Section 11.42 of the Tax Code provides in part:

(a) . . . [E]ligibility for and amount of an exemption authorized by this chapter for any tax year are determined by a claimant's qualifications on January 1. A person who does not qualify for an exemption on January 1 of any year may not receive the exemption that year.

(b) An exemption authorized by Section 11.11 of this code [exempting property owned by the state or a political subdivision if property is used for public purposes] is effective immediately on qualification for the exemption.

When read in isolation from other Tax Code provisions, section 11.42(a) appears to require a person, not specific property, to be exempt by January 1 to receive a tax exemption. If this interpretation were correct, one might conclude that the real property about which you ask would be exempt from taxation from May through the end of the tax year if the church that purchased the property was a tax-exempt organization as of January 1 of that year. Nevertheless, the legislative history of the section, as well as the language of other sections of chapter 11, cause us to conclude that this interpretation of

¹For purposes of this opinion, we assume that the church about which you ask is a religious organization qualified for an exemption from taxation under Tax Code section 11.20(c). We further assume that the real property about which you ask qualifies for a tax exemption under Tax Code section 11.20(a).

section 11.42(a) is incorrect. Rather, we conclude that section 11.42(a) requires a person and the real property at issue to qualify for a tax exemption as of January 1 if the property is to be exempt from ad valorem taxation for the tax year.

The Sixty-sixth Legislature codified the Property Tax Code, Tax Code title 1, in 1979. See Act of May 26, 1979, 66th Leg., R.S., ch. 841, 1979 Tex. Gen. Laws 2217. Prior to codification, the substance of section 11.42 was found in article 7151, V.T.C.S., which clearly required property to be eligible on January 1 to receive an exemption for all or part of the tax year:

All property shall be listed for taxation between January 1st and April 30th of each year . . . with reference to the quantity held or owned on the first day of January in the year for which the property is required to be listed or rendered. . . . If any property has . . . been exempt or has been claimed to be exempted from taxation for any period or limit of time, and such period of exemption shall expire between January 1st and December 31st of any year, said property shall be assessed and listed for taxes as other property; but the taxes assessed against said property shall be for only the pro rata of taxes for the portion of such year remaining.

Act of May 1, 1909, 31st Leg., 1st C.S., 1909 Tex. Gen. Laws 372 (codified at V.T.C.S. art. 7151, § 1), *repealed by* Act of May 26, 1979, 66th Leg., R.S., ch. 841, § 6(a)(1), 1979 Tex. Gen. Laws 2217, 2329.

A Texas court of civil appeals considered whether article 7151 authorized prorating the taxes in a situation in which a tax-exempt organization purchased otherwise taxable property in the middle of the year:

Since the adoption of Article 7151 in 1909, the law has been that all property must be valued and assessed against the owner as of January 1 of the year, without regard to any increase or decrease in value, and without regard to any change of ownership during the year, subject to the provision that if the property was owned on the controlling date by an owner whose property is tax exempt, and the property is sold or transferred during the year to a non-exempt owner, such non-exempt owner shall pay only the pro rata of the taxes for that portion of the year that the property is owned by him. There was no provision for prorating the taxes in cases where the property was owned on January 1st by a non-exempt owner and sold during the year to an exempt owner.

Dickison v. City of San Antonio, 349 S.W.2d 640, 642 (Tex. Civ. App.—San Antonio 1961, writ ref'd n.r.e.); see also *Hedgecroft v. City of Houston*, 239 S.W.2d 828, 830 (Tex. Civ. App.—Galveston), *rev'd on other grounds*, 244 S.W.2d 632 (1951); Attorney

General Opinion O-4613 (1942) at 4. Under article 7151, therefore, a mid-year transfer of real property from a nonexempt owner to an exempt owner did not immediately qualify the real property for an exemption.

Although the 1979 codification of the Property Tax Code was partly substantive, the legislature simply reorganized other, retained provisions. *See* House Study Group, Bill Analysis, S.B. 621, 66th Leg., R.S. (1979). The amendments to the substance of section 11.42(a) were not listed among any of the substantive revisions of the bill. *See id.*; House Comm. on Ways and Means, Bill Analysis, S.B. 621, 66th Leg., R.S. (1979).

Furthermore, in 1977 the legislature had considered a codification of the Property Tax Code that the legislature did not enact. *See* H.B. 846, 65th Leg., R.S. (1977). The substance of what is now section 11.42(a) was in the bill as introduced, but it was not noted among the substantive revisions the bill proposed. *See* House Comm. on Ways and Means, Bill Analysis, H.B. 846, 65th Leg., R.S. (1977). We find no other indication in the legislative history of either the 1979 or the 1977 bill that the legislature intended to substantially modify what is now section 11.42(a). *See* TEXAS RESEARCH LEAGUE, THE TEXAS PROPERTY TAX: BACKGROUND FOR REVISION 71-73 (2d ed. 1976). In our opinion, therefore, we must construe section 11.42(a) to deem property eligible for a tax exemption only if the property qualifies for exemption on January 1 of the tax year. Moreover, the *Dickison* court's declaration, that section 11.42(a) does not provide for prorating the taxes in a case where a nonexempt owner owned the property on January 1st, but sold the property during the year to an exempt owner, remains valid. *See Dickison*, 349 S.W.2d at 642.

Other provisions of chapter 11 of the Tax Code are consistent with this interpretation. A court must attempt to construe a statute as a whole, harmonizing the statute in its entirety. 67 TEX. JUR. 3D *Statutes* § 125, at 715-17 (1989). We believe examining other relevant provisions of chapter 11 is instructive in interpreting section 11.42(a).

Whether particular property is exempt from taxation under chapter 11 of the Tax Code is generally dependent upon two factors: first, who owns the property and second, the use to which the property is put. For example, under section 11.11(a) of the Tax Code, property owned by the state or a political subdivision of the state is exempt from ad valorem taxation only if the property is used for public purposes. Similarly, under section 11.18(a), a charitable organization that qualifies as such under section 11.18(d), (e), (f), and (g) of the Tax Code is entitled to "an exemption from taxation of the buildings and tangible personal property" the organization owns, but only if charitable organizations generally have exclusive use of the buildings and property. A religious organization, which must qualify as such under section 11.20(c) of the Tax Code, is entitled to an exemption from taxation on real property only in two circumstances: first, if the property is or will be used primarily as a place of regular religious worship and is or will be reasonably necessary for engaging in religious worship; or second, if the property is

reasonably necessary for use as a residence for clergy and produces no revenue for the religious organization. Tax Code § 11.20(a)(1), (3), (5).

Consequently, to interpret section 11.42(a) to require only that a person be qualified for exemption on January 1 of a tax year, without regard to the use to which the real property is put, ignores the two-pronged basis for tax exemption. On the other hand, if we interpret section 11.42(a) to require a person and the real property involved to qualify for an exemption as of January 1 of the tax year, we believe section 11.42(a) is consistent with the two-pronged basis for tax exemptions. Such an interpretation requires us also to understand section 11.42(a) to state that any organization or its real property that is not qualified for an exemption as of January 1 is subject to ad valorem taxation for the tax year.

Moreover, section 11.42(b) supports our interpretation of section 11.42(a). Section 11.42(b) provides that public property used for public purposes is exempt from taxation immediately upon qualification. Subsection (b) suggests that the legislature desired specifically to except public property used for public purposes from the general rule, set forth in subsection (a), that real property must qualify on January 1 of a tax year to be eligible for a tax exemption in that year. Subsection (b) would be unnecessary if this office construed subsection (a) to exempt, immediately upon purchase, real property of a qualified tax-exempt organization. Accordingly, real property owned by a tax-exempt organization other than the state or a political subdivision, where the organization and the real property qualify for exemption from taxation under section 11.11 of the Tax Code, is not qualified for immediate exemption unless law other than section 11.42(a) explicitly provides otherwise.

In conclusion, we believe section 11.42(a) requires a property owner and the real property in issue to be qualified for a tax exemption on January 1 of a tax year if the property is to be exempt from ad valorem taxation for that tax year. A mid-year transfer of real property from a nonexempt owner to an exempt owner does not alter the taxable character of the property during that tax year. This conclusion does not obtain, however, if other law expressly provides otherwise. Because we are unaware of any law to the contrary, we determine that a religious organization that has purchased real property in May is liable for ad valorem taxes that accrue from May through December.

S U M M A R Y

Section 11.42(a) of the Tax Code requires a property owner and the real property in issue to be qualified for a tax exemption on January 1 of a tax year if the property is to be exempt from ad valorem taxation. A mid-year transfer of real property from a nonexempt owner to an exempt owner does not alter the taxable character of the property during that tax year unless other law

explicitly provides to the contrary. Consequently, where a religious organization has purchased real property in May, the religious organization is liable for ad valorem taxes that accrue from May through December.

Yours very truly,

A handwritten signature in cursive script, reading "Kimberly K. Oltrogge".

Kimberly K. Oltrogge
Assistant Attorney General
Opinion Committee