

PT 09-12

Tax Type: Property Tax

Issue: Religious Ownership/Use

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

**ANOINTED WORD
INTERNATIONAL MINISTRIES,**

APPLICANT

v.

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

Docket No: 08-PT-0046

Real Estate Exemption

**For 2007 Tax Year
P.I.N. 29-14-402-009-0000**

Cook County Parcel

**Kenneth J. Galvin
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Dr. Jacqueline Anderson, *pro se*, on behalf of Anointed Word International Ministries; Ms. Paula Hunter, Special Assistant Attorney General, on behalf of the Department of Revenue of the State of Illinois.

SYNOPSIS:

This proceeding raises the issue of whether real estate identified by Cook County Parcel Index Number 29-14-402-009-0000 (hereinafter the “subject property”) qualifies for exemption from 2007 real estate taxes under 35 ILCS 200/15-40, wherein all property used exclusively for religious purposes is exempted from real estate taxation.

The controversy arises as follows: On March 18, 2008, Anointed Word International Ministries (hereinafter “Anointed Word”) filed an Application for Property Tax Exemption with the Cook County Board of Review (hereinafter the “Board”). The Board reviewed Anointed Word’s application and recommended to the Illinois

Department of Revenue (hereinafter the “Department”) that the exemption be denied. The Department affirmed the Board’s recommendation in a determination dated October 30, 2008, finding that the subject property was not in exempt use in 2007. Dept. Ex. No. 1. On November 25, 2008, Anointed Word filed a request for a hearing as to the denial and presented evidence at a formal evidentiary hearing on June 11, 2009, with Dr. Jacqueline Anderson, Founder, CEO and Pastor of Anointed Word, Brother Willie Anderson, Chief of Operations, and Mr. Kermit Bates, Church Manager and Deacon, testifying. Following submission of all evidence and a careful review of the record, it is recommended that the Department’s denial be affirmed.

FINDING OF FACT:

1. Dept. Ex. No. 1 establishes the Department’s jurisdiction over this matter and its position that the subject property was not in exempt use in 2007. Tr. pp. 4-5; Dept. Ex. No. 1.

CONCLUSIONS OF LAW:

An examination of the record establishes that Anointed Word has not demonstrated by the presentation of testimony, exhibits and argument, evidence sufficient to warrant an exemption of the subject property for the 2007 tax year. In support thereof, I make the following conclusions.

Article IX, Section 6 of the Illinois Constitution of 1970 limits the General Assembly’s power to exempt property from taxation as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The General Assembly may not broaden or enlarge the tax exemptions permitted by the constitution or grant exemptions other than those authorized by the constitution. Board of Certified Safety Professionals v. Johnson, 112 Ill. 2d 542 (1986). Furthermore, Article IX, Section 6 does not, in and of itself, grant any exemptions. Rather, it merely authorizes the General Assembly to confer tax exemptions within the limits imposed by the constitution. Locust Grove Cemetery v. Rose, 16 Ill. 2d 132 (1959). Thus, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App. 3d 497 (1st Dist. 1983).

In accordance with its constitutional authority, the General Assembly enacted section 15-40 of the Property Tax Code which exempts property used exclusively for religious purposes. 35 ILCS 200/15-40 (1996). The Illinois Supreme Court defined the term “religious use” as follows:

As applied to the uses of property, a religious purpose means a use of such property by a religious society or persons as a stated place for public worship, Sunday schools and religious instruction.

People ex rel. McCullough v. Deutsche Evangelisch Lutherisch Jehova Gemeinde Ungeanderter Augsburgischer Confession, 249 Ill. 132, 136-137 (1911). The word “exclusively” when used in section 200/15-40 and other exemption statutes means “the primary purpose for which property is used and not any secondary or incidental purpose.” Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App. 3d 186 (4th Dist. 1933).

It is well established in Illinois that a statute exempting property from taxation must be strictly construed against exemption, with all facts construed and debatable

questions resolved in favor of taxation. Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430 (1st Dist. 1987). Based on these rules of construction, Illinois courts have placed the burden of proof upon the party seeking exemption, and have required such party to prove, by clear and convincing evidence, that it falls within the appropriate statutory exemption. Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App. 3d 678 (4th Dist. 1994).

The evidence and testimony presented at the hearing were insufficient for me to conclude that Anointed Word is using the subject property for religious purposes. The only documentary evidence admitted at the hearing were undated photographs showing activities, which according to the testimony of Dr. Anderson and witnesses, occurred on the subject property. These undated photographs do not rise to the level of “clear and convincing evidence” that is necessary to prove entitlement to a property tax exemption for religious purposes.

Dr. Anderson testified that the subject property is located at 1500 East 162 Street in South Holland. The property was formerly a truck stop, which was torn down in 1985, and the property has been vacant since then. Tr. p. 8. Anointed Word currently has a multi-use building at 3434 West 159th Street which is used for religious services and an activity center at 15839 South Trumbull. The subject property is a few miles east of these properties. Tr. pp. 9-10. Anointed Word is non-denominational. Tr. pp. 60-61. Anointed Word maintains several ministries including accountability, retention, deacon and trustee board teaching, prison, food pantry, mime, dance, teaching, health and wellness, nurses, acupuncture, seminar and workshop and ministry preparation. Tr. pp. 10-11.

Dr. Anderson testified that Anointed Word purchased the subject property on October 31, 2007. Tr. pp. 27-28. No deed was admitted showing the purchase. According to Dr. Anderson, on April, 4, 2007, prior to Anointed Word's purchase of the subject property, South Holland changed the zoning for the property to "light industrial where they would restrict a church being able to come in on that land." According to Dr. Anderson, South Holland will not permit a church to be built on the subject property. She testified that "we don't believe in the steeples and the stained glass windows because I explained to them we want to get the un-churched." "We are after those that are afraid or for some reason don't want to go in a church." Instead of a church, Anointed Word plans to build a "multi-use building," which will be a "stately, beautiful, excellent edifice." Tr. pp. 17-20.

As of the date of this hearing, there has been no construction on the subject property. Tr. pp. 45-46. According to Dr. Anderson, she told South Holland's Planning Board about Anointed Word's intended use and "they told us that our plan was a permitted use and to go on." Tr. p. 123. No documentary evidence was admitted to support any of this testimony. It is unclear from the record in this case whether the subject property is zoned for Anointed Word's intended use.

According to Dr. Anderson, Anointed Word has spent thousands of dollars in developing the property. She testified that Anointed Word has written checks to, *inter alia*, development consultants, project managers, engineers, architects, attorneys and accountants. Tr. pp. 26-29. No documentary evidence was admitted showing any expenditures. She testified that Anointed Word met with the Environmental Protection Agency to make sure that no further remediation was needed on the land. "We also met

with people about the soil samples...” Tr. p. 28. No documentary evidence was admitted to support this testimony.

Applicant’s actual use determines whether the property in question is used for an exempt purpose. “Intention to use is not the equivalent of use.” Skil Corp v. Korzen, 32 Ill. 2d 249, 252 (1965). However, exemptions have been allowed where property is in the actual process of development and adaptation for exempt use. Illinois Institute of Technology v. Skinner, 49 Ill. 2d 59 (1971); People ex rel. Pearsall v. Catholic Bishop, 311 Ill. 11 (1924). Adapting and developing a property for an eventual exempt use can be sufficient to satisfy the actual use requirement. Weslin Properties v. Department of Revenue, 157 Ill. App. 3d 580 (2nd Dist. 1987). Without documentary evidence showing the actual expenditures and that Anointed Word’s intended use is allowable under South Holland’s zoning laws, I am unable to determine that the subject property was in the process of development and adaptation for exempt use in 2007.

Dr. Anderson and Anointed Word’s witnesses testified as to several activities that took place on the subject property, after its purchase, including a “possessing the land service” on November 11, 2007. According to the testimony, notification of this service was sent to the Daily Southtown Newspaper and the Mayor and Chief of Police of South Holland. No documentary evidence was admitted to support this testimony. Tr. p. 29.

On November 10, 2007, Anointed Word’s Board “met and did a lot of planning discussions there on the land.” Tr. p. 31. There was testimony that Anointed Word had dance ministry practice and walking Bible ministry combined with a health walk on the land. Anointed Word’s intercessory prayer group met on the land. Ushers met on the land to “teach how to work the hand signals and talk about the uniforms.” There was

testimony that food pantry ministry, mime ministry, aerobics ministry, prison ministry, gospel aerobics, youth Bible study meetings and a Christmas pageant were held on the land. Tr. pp. 31-43.

According to the testimony, some of these activities occurred weekly on the land after its purchase. No documentary evidence was admitted to show that these activities were held. Thirty-eight photographs were admitted into evidence on behalf of Anointed Word. Eight of these photographs show what seems to be the same religious service with Dr. Anderson officiating. Some pictures show people walking. Some of the pictures show vacant land. Some pictures show a parking area. I cannot ascertain from the pictures that the religious service and the walking occurred on the subject property. The people in the photographs are dressed for winter. Dr. Anderson testified that the weather was never a “deterrent” to Anointed Word conducting religious services on the subject property because “weather has absolutely no power to deter committed people.” Tr. pp. 58-59. Anointed Word is clearly a religious organization. However, there was insufficient documentary evidence in the record for me to conclude that the subject property was being adapted for religious use or was exclusively used for religious purposes in 2007.

WHEREFORE, for the reasons stated above, it is recommended that the Department’s determination which denied the exemption from 2007 real estate taxes on the grounds that the subject property was not in exempt use should be affirmed and Cook County Parcel identified by P.I.N. 29-14-402-009-0000 should not be exempt from property taxes in 2007.

August 3, 2009

ENTER:

Kenneth J. Galvin
Administrative Law Judge

