

PT 09-17

Tax Type: Property Tax

Issue: Religious Ownership/Use

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

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

v.

**NEW BIRTH CHURCH OF GOD
IN CHRIST**

Applicant

Docket # 08-PT-0021

PIN 23-03-604-012

PIN 23-04-604-024

Tax Year 2008

RECOMMENDATION FOR DISPOSITION

Appearances: Robin Gill, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Jerry and Betty Patton, *pro se*, for New Birth Church of God in Christ

Synopsis:

This case concerns whether two parcels of property in Vermilion County that are owned by New Birth Church of God in Christ (“applicant”) qualify for a property tax exemption for the year 2008. The applicant alleges that the property qualifies for an exemption on the basis that it is used exclusively for religious purposes pursuant to section 15-40 of the Property Tax Code (35 ILCS 200/1-1 *et seq.*). The Vermilion County Board of Review recommended that the property be exempt from taxes, and the Department of Revenue (“Department”) disagreed with that decision. The Department

determined that the property is not being used exclusively for religious purposes because the property is vacant. The applicant timely protested the Department's decision to deny the exemption, and an evidentiary hearing was held. After reviewing the record, it is recommended that this matter be resolved partially in favor of the applicant.

FINDINGS OF FACT:

1. One parcel of property at issue, PIN 23-03-604-012, is located at 951 Fowler in Danville, Illinois ("Fowler property"). The property was acquired through a quitclaim deed by the Victory Temple Church of God in Christ on August 13, 1996. (Dept. Ex. #1, pp. 21-23)
2. The other parcel at issue, PIN 23-04-604-024, is located at 637 East Fairchild in Danville, Illinois ("Fairchild property"). This property was acquired through a quitclaim deed by the Victory Temple Church of God in Christ on September 26, 1995. (Dept. Ex. #1, pp. 19-20)
3. On February 7, 2008, the applicant's articles of incorporation were amended to change the corporate name from Victory Temple Worship Center (formerly known as Victory Temple Church of God in Christ) to New Birth Church of God in Christ. (Dept. Ex. #1, pp. 14, 16)
4. Prior to the year in question, both parcels were exempt from property taxes. The applications for exemption were filed because the corporate name changed. (Dept. Ex. #1, pp. 9, 11)
5. During 2007, a fire burned the building that is on the Fowler property. The building had been used for the church's youth services. The building was not totally destroyed and is repairable; the applicant is trying to obtain the funds to

- repair it so that the youth services may still be held there. (Dept. Ex. #1, p. 2; Tr. pp. 7-9, 16)
6. During 2008, the applicant mowed the lawn and maintained the Fowler property. The applicant also provided food at the site to the people who came to help with the maintenance. (Dept. Ex. #1, p. 12; Tr. pp. 7, 12)
 7. The applicant's church services are currently held at 1107 East Voorhees Street in Danville, which is approximately a mile from the Fowler property. (Dept. Ex. #1, p. 2; Tr. p. 11)
 8. During 2008, the applicant did not use the Fairchild property for any church-related functions or activities. The applicant allowed the business next to the property to park vehicles on the property. The applicant did not charge the business owner for parking there, and in return the business owner mowed the grass on the applicant's property. (Dept. Ex. #1, p. 13; Tr. p. 13)
 9. The building that was previously on the Fairchild property was destroyed by fire. The applicant removed the building, and the property has been clear for a couple of years. (Dept. Ex. #1, p. 4; Tr. pp. 13-14)

CONCLUSIONS OF LAW:

Article IX, section 6 of the Illinois Constitution of 1970 authorizes the General Assembly to grant property tax exemptions in limited circumstances and provides, in part, 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. Ill. Const. 1970, Art. IX, §6.

Pursuant to this constitutional authority, the General Assembly enacted section 15-40 of the Property Tax Code, which provides, in part, as follows:

- (a) Property used exclusively for:
 - (1) religious purposes, or
 - (2) school and religious purposes, or
 - (3) orphanages

qualifies for exemption as long as it is not used with a view to profit. 35 ILCS 200/15-40.

The term “exclusively” refers to the primary purpose for which the property is used. McKenzie v. Johnson, 98 Ill. 2d 87, 98 (1983). It is well-established that property tax exemption provisions are strictly construed in favor of taxation. Chicago Patrolmen’s Association v. Department of Revenue, 171 Ill. 2d 263, 271 (1996). The party claiming the exemption has the burden of proving by clear and convincing evidence that it is entitled to the exemption, and all doubts are resolved in favor of taxation. *Id.*; City of Chicago v. Department of Revenue, 147 Ill. 2d 484, 491 (1992).

In Mount Calvary Baptist Church, Inc. v. Zehnder, 302 Ill. App. 3d 661 (1st Dist. 1998), the church sought a religious-use exemption for several parcels of property that had, among other things, a burned church building. The building was damaged by fire in September 1989, which resulted in the relocation of the worship services. The church was seeking an exemption for the year 1991, during which the burned structure remained standing but was not rebuilt; litigation over the insurance coverage for the building prevented the church from being immediately rebuilt. The court noted that the burned building was not actually used for religious services, but sometimes members “would go there and pray.” *Id.* at 664. In allowing the exemption, the court stated that the “building had been used exclusively for religious purposes for numerous years and was not being

used for nonexempt purposes or for any purpose at all, other than prayer.” *Id.* at 670. The court concluded that where property has been devoted to a religious purpose for numerous years, “an incidental interruption of its actual use for that religious purpose due to fire will not destroy the exemption.” *Id.*

The Mount Calvary court noted that the facts in that case resembled those of Our Savior Lutheran Church v. Department of Revenue, 204 Ill. App. 3d 1055 (5th Dist. 1990). In Our Savior Lutheran Church, the church owned a single building that consisted of a church, office, and parsonage; a carport was adjacent to the parsonage but not attached to it. The Department argued that the parsonage and carport should not be exempt because they were essentially vacant and unused. The appellate court disagreed and stated that when property has been used for an exempt purpose for 40 years and a portion of it becomes temporarily vacant but is not used for a nonexempt purpose, the exemption should be allowed. *Id.* at 1062.

In the present case, the facts concerning the use of the Fowler property are similar to those in Mount Calvary, *supra*, and Our Savior Lutheran Church, *supra*. The building on the property was used for religious purposes for many years prior to the fire, and the property was exempt prior to the year in question. After the fire, the building’s condition is repairable, and the applicant has been trying to raise money to repair it. During the year in question, the applicant maintained the property and provided food at the property site for those who helped to maintain it; the Fowler property was not used for any nonexempt purpose.

It must be noted that in Mount Calvary, *supra*, the applicant was in litigation concerning the insurance coverage for the building that prevented the building from being

immediately rebuilt. *Id.* at 664. In Our Savior Lutheran Church, *supra*, the court indicated that the property was not kept vacant and unused for an extended period. *Id.* at 1060. None of the cases indicate that an exemption would be allowed if the building on the Fowler property remained unused for a prolonged period. Because the fire on the Fowler property occurred during the year prior to the one in question and the applicant is attempting to raise funds to repair it, the property falls within the guidelines of Mount Calvary, *supra*, and Our Savior Lutheran Church, *supra*. If the applicant's efforts to obtain funds fail and the building remains unrepaired for an extended period of time, a denial of the exemption may be warranted. During the year in question, however, the property is entitled to an exemption.

With respect to the Fairchild property, the facts are distinguishable from those in Mount Calvary, *supra*, and Our Savior Lutheran Church, *supra*, because the Fairchild property was used for a nonexempt purpose during 2008. The testimony indicated that a repair shop is next to the Fairchild property, and the applicant allows the business owner to park vehicles on the property. The applicant does not charge rent to the business owner, but he cuts the grass on the Fairchild property in return for parking his vehicles there.

Although the applicant intends to use the Fairchild property in the future for youth activities, the use of the property during the year in question is the only activity that must be considered in determining whether the property should be exempt. See Jackson Park Yacht Club v. Department of Local Government Affairs, 93 Ill. App. 3d 542, 546 (1st Dist. 1981). Because the evidence indicates that during 2008 the repair business used the

property to park vehicles there, it must be found that the property was used for a nonexempt purpose. The Fairchild property, therefore, is not entitled to an exemption.

Recommendation:

For the foregoing reasons, it is recommended that the Fowler property, PIN 23-03-604-012, be exempt from taxes for the year 2008, and the Fairchild property, PIN 23-04-604-024, be denied the exemption.

Linda Olivero
Administrative Law Judge

Enter: September 25, 2009