

PT 09-19
Tax Type: Property Tax
Issue: Religious Ownership/Use

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

In re 2008 Property Tax)	Docket Nos.	09-PT-0034
Exemption Application of)		08-19-33
)	PIN	13-15-255-006
FIRST BAPTIST CHURCH)	John E. White,	
OF SHABBONA)	Administrative Law Judge	

RECOMMENDATION FOR DISPOSITION

Appearances: Reverend Joel T. Badal, appeared, *pro se*, for the First Baptist Church of Shabbona; Paula Hunter, Special Assistant Attorney General, appeared for the Illinois Department of Revenue.

Synopsis:

This matter arose after the Illinois Department of Revenue (Department) denied the application for a property tax exemption that the First Baptist Church of Shabbona (the Church) filed regarding property it owns, and which is situated in Dekalb County, Illinois. The issue is whether the property was being used exclusively for religious purposes during 2008, and is, therefore, entitled to the exemption authorized by § 15-40 of Illinois' Property Tax Code (PTC) for that year.

The hearing was held at the Department's offices in Chicago. I have reviewed the evidence offered at hearing, and I am including in this recommendation findings of fact and conclusions of law. I recommend that the Church's religious exemption application be denied.

Findings of Fact:

1. The Church is organized and operated exclusively for religious purposes. Department Ex. 1 (copies of, respectively: (1) the Department's Denial letter to the Church; and (2) the Church's completed form PTAX-300-R, Religious Application for Non-Homestead Property Tax Exemption — County Board of Appeals Statement of Facts (application form)), p. 2 (Part 2 of the application form, listing the Church's exemption identification number); Hearing Transcript (Tr.) pp. 8-10 (Department counsel asserting that the Department does not contest and concedes that the Church is a religious organization).
2. The Department denied the Church's exemption application after determining that the property was not being used primarily for religious purposes. Department Ex. 1, p. 1.
3. Joel T. Badal (Badal) is the Church's pastor. Tr. p. 48 (Badal); Department Ex. 1, p. 2 (Parts 5-6 of application).
4. The property at issue is a 2-story residential building with a basement, and has an address that is different than that of the Church, itself. Department Ex. 1, pp. 1-2 (Parts 1, 5 of application).
5. On its application, the Church wrote, in the section where it was asked to identify the property's use, "12/2006 to 12/2008 [the property] has been used to house a family whose home was foreclosed. We have provided counseling and training for this family during these two years. We have fulfilled our religious duty as a Christian organization as bound [*sic*] by the IRS." Department Ex. 1, p. 1 (Part 3 of application).
6. The Church did not receive any rent from the occupants of the property during 2008.

Applicant Ex. 1; Tr. p. 16 (Badal).

7. Through 2008, the property was used by the occupants as their family home.

Department Ex. 1, p. 1; Tr. pp. 20-22 (Badal).

8. The property was not used as a parsonage, or for any public worship activities, during 2008. Tr. p. 22 (Badal).

9. The occupants of the property paid the bills for utility services associated with the property. Applicant Exs. 1 (copies of the Church's treasurer's reports for 2008), 2 (copies of garbage, sewer, and water bills, natural gas bills, and electric bills for the property); Tr. p. 19 (testimony of Bill Griffith (Griffith), Chairman of the Church's Elder Board).

10. When reviewing the Church's religious application at the county level, the Dekalb County Board of Review recommended as follows: "Dekalb County Board of Review recommends denial per 35 ILCS 200/15-40. The structure which was formerly used as a parsonage now houses a family whose home was foreclosed upon. The family pays no rent. The Board felt the use was charitable but does not conform to statute." Department Ex. 1, p. 3 (Part 7 of application).

Conclusions of Law:

Arguments

At closing argument, the Church argued that the property was being used exclusively for religious purposes because it was being used for the religious and spiritual instruction of the family residing there. Tr. pp. 28-29 (closing argument). The

Department contends that, during 2008, the Church's use of the property as a residence did not satisfy the terms of PTC § 15-40. Tr. pp. 25-28 (closing argument).

Analysis

Article IX of the 1970 Illinois Constitution generally subjects all real property to taxation. Eden Retirement Center, Inc. v. Department of Revenue, 213 Ill. 2d 273, 285, 821 N.E.2d 240, 247 (2004). Article IX, § 6 permits the legislature to exempt certain property from taxation based on ownership and/or use. Ill. Const. Art. IX, § 6 (1970). One class of property that the legislature may exempt from taxation is property used exclusively for religious purposes. Ill. Const. Art. IX, § 6 (1970). The phrase 'exclusively used' means the primary purpose for which property is used and not any secondary or incidental purpose. People ex rel. Nordlund v. Assoc. of the Winnebago Home for the Aged, 40 Ill. 2d 91, 101, 237 N.E.2d 533, 539 (1968).

Pursuant to the authority granted to it by the Illinois Constitution, the General Assembly enacted § 15-40 of the Property Tax Code (PTC), which provides — and, during 2008, provided — in relevant part:

§ 15-40. Religious purposes, orphanages, or school and religious purposes.

(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.

(b) Property that is owned by

- (1) churches or
- (2) religious institutions or
- (3) religious denominations

and that is used in conjunction therewith as housing facilities provided for ministers (including bishops, district superintendents and similar church officials whose ministerial duties are not limited to a single congregation), their spouses, children and domestic workers, performing the duties of their vocation as ministers at such churches or

religious institutions or for such religious denominations, including the convents and monasteries where persons engaged in religious activities reside also qualifies for exemption.

A parsonage, convent or monastery or other housing facility shall be considered under this Section to be exclusively used for religious purposes when the persons who perform religious related activities shall, as a condition of their employment or association, reside in the facility.

35 ILCS 200/15-40.

Statutes granting tax exemptions must be construed strictly in favor of taxation, and the party claiming an exemption has the burden of proving clearly and conclusively that the property in question falls within both the constitutional authorization and the terms of the statute under which the exemption is claimed. Board of Certified Safety Professionals of the Americas, Inc. v. Johnson, 112 Ill. 2d 542, 547, 494 N.E.2d 485, 488 (1986); *see also* In the Matter of Jones, 285 Ill. App. 3d 8, 13, 673 N.E.2d 703, 706 (3rd Dist. 1996) (clear and convincing evidence defined “as the quantum of proof which leaves no reasonable doubt in the mind of the fact finder as to the veracity of the proposition in question.”).

An analysis of this issue is helped by a review of Illinois case law interpreting PTC § 15-40, and its statutory predecessors, regarding property owned by an exclusively religious organization and used for residential purposes. I begin with McKenzie v. Johnson, 98 Ill. 2d 87, 456 N.E.2d 73 (1983).

In McKenzie, a property taxpayer in Champaign County sought to have sections of Illinois’ PTC that authorized certain property tax exemptions declared unconstitutional, and also sought an injunction prohibiting the Department from granting or approving any such exemptions in prospective tax years. McKenzie, 98 Ill. 2d at 91,

456 N.E.2d at 75. The first statutory section the McKenzie court addressed was § 19.2, the predecessor to current § 15-40. McKenzie contended that the legislature's 1957 amendment authorizing an exemption for parsonages should be declared unconstitutional because parsonages are used primarily for residential purposes and, therefore, could not be used exclusively for religious purposes as required by article IX, section 6, of the Constitution. *Id.* at 97-98, 456 N.E.2d at 76-77 (“In essence McKenzie argues that our cases hold that a parsonage, by its very nature, can never be used exclusively for religious purposes because in every case its residential character must predominate over any other religious uses of the property.”).

As the court indicated, McKenzie supported his argument using the court's own, prior interpretation of an earlier version of Illinois' statutory exemption for parsonages, under Illinois' 1870 Constitution. In ultimately rejecting McKenzie's argument, the court distinguished the text of the earlier statute with the text of the 1981 version of § 19.2. Specifically, the court noted that:

The 1905 parsonage exemption declared unconstitutional in *People ex rel. Thompson v. First Congregational Church* authorized an exemption for “[a]ll church property *** exclusively used for public worship and all parsonages or residences *** used by persons devoting their entire time to church work.” (Emphasis added.) (232 Ill. 158, 161, 83 N.E. 536.) That parsonage exemption is fundamentally different from the exemption provided by section 19.2, the statute involved in this case. In providing an exemption for parsonages whether or not they were used exclusively for religious purposes, the 1905 exemption violated the venerable principle that a property tax exemption created by “statute cannot be made broader than the provisions of the constitution and no property except that mentioned in [the exemption] section [of the Constitution] can be exempted by any law passed by the legislature.” ***

The language of the current parsonage exemption,

on the other hand, refers to “all *such* property owned by churches or religious institutions *** and used *** as parsonages ***.” (Emphasis added.) (Ill.Rev.Stat.1981, ch. 120, par. 500.2.) The word “such” refers to the preceding language which allows an exemption only for “property used exclusively for religious purposes.” (Ill.Rev.Stat.1981, ch. 120, par. 500.2.) The current parsonage exemption only lists parsonages to illustrate or describe one type of property that, under appropriate circumstances, may qualify for the general religious property exemption which tracks the language of article IX, section 6, of the Constitution. Unlike the 1905 parsonage exemption the current parsonage exemption is subject to the exclusive-religious-use requirements of the Constitution and does not unlawfully enlarge the area of allowable exemptions.

McKenzie, 98 Ill. 2d at 95-96, 456 N.E.2d at 77.

The McKenzie court also contrasted what it called the “extremely narrow construction of primary religious use” that was embraced within the cases cited by McKenzie, with more recent Illinois authority on tax exemptions, and noted that those more recent cases “do not establish that parsonages may never be used exclusively — that is primarily — for religious purposes.” McKenzie, 98 Ill. 2d at 98-99, 456 N.E.2d at 79. Perhaps the most important point to take from McKenzie is to carefully consider the court’s actual holding:

*** Given that residence facilities have, on occasion, qualified for exemption from taxation under the school exemption [citations omitted] and for campus dormitories ..., we cannot say that a parsonage could never qualify for exemption as property used exclusively for religious purposes solely because it is also used for residential purposes. ... Whether a particular parsonage may be entitled to exemption turns on the evidence showing how the parsonage is being used, but the language exempting parsonages in section 19.2 is not unconstitutional on its face.

McKenzie, 98 Ill. 2d at 99-100, 456 N.E.2d at 79.

Shortly after McKenzie was decided, the appellate court issued its decision in Evangelical Alliance Mission v. Department of Revenue, 164 Ill. App. 3d 431, 517 N.E.2d 1178 (2d Dist. 1987). In that case, the Department denied separate applications for property tax exemptions filed by The Evangelical Alliance Mission (TEAM) for 1982 and 1983. Evangelical Alliance Mission v. Department of Revenue (hereinafter, TEAM), 164 Ill. App. 3d at 432, 517 N.E.2d at 1179.¹ The TEAM decision provides guidance here because of the court's reasoning when ruling upon one particular argument advanced by the Department in that case, and because of the legislature's amendment to PTC § 15-40, after the years at issue in TEAM.

In 1982, the statute authorizing the exemption for property used exclusively for religious purposes had remained unchanged since 1976, and that statute was the same one the Illinois Supreme Court interpreted in McKenzie. Ill.Rev.Stat. ch. 120, ¶ 500.2 (West) (1983); *compare also* McKenzie, 98 Ill. 2d at 96, 456 N.E.2d at 77 *with* TEAM, 164 Ill. App. 3d at 440, 517 N.E.2d at 1184. In 1984, however, the Illinois General Assembly amended PTC § 19.2, and, for the first time, expressly articulated that:

A parsonage, convent or monastery shall be considered for purposes of this Section to be exclusively used for religious purposes when the church, religious institution, or denomination requires that the listed persons who perform religious related activities shall, as a condition of their employment or association, reside in such parsonage, convent or monastery.

P.A. 84-1250, Art. II, § 1, eff. August 4, 1984. By 2005, the legislature had amended the

¹ While TEAM filed exemption applications for both 1982 and 1983, the court held that it lacked jurisdiction over the 1983 dispute. TEAM, 164 Ill. App. 3d at 438-39, 517 N.E.2d at 1182-83.

text of that specific paragraph to include and apply to not only parsonages, convents or monasteries, but to any “housing facility” owned by any church or by any religious institution or denomination. 35 ILCS 200/15-40 (quoted *supra*, on pages 4 and 5 of this recommendation).

The 1984 legislative amendment to former § 19.2 substantively changed the statute that had been in effect in 1982 and that was interpreted in TEAM and McKenzie. The substantive difference between the 1976 and 1984 versions of the religious exemption statute is made apparent by the TEAM court’s rejection of an argument presented by the Department:

... [T]he Department contends that the exemption applies to housing of ministers “who are required by their duties to live there.” This misstates the test set forth in *McKenzie v. Johnson* (1983), 98 Ill. 2d 87, 74 Ill.Dec. 571, 456 N.E.2d 73.

This contention of the Department’s goes to the core question in this case of whether the apartment building parcel was primarily used for religious purposes. In *McKenzie v. Johnson* our supreme court said:

“[A] parsonage qualifies for an exemption [under Ill.Rev.Stat.1981, ch. 120, par. 500.2] if it reasonably and substantially facilitates the aims of religious worship or religious instruction because the pastor’s religious duties require him to live in close proximity to the church or because the parsonage has unique facilities for religious worship and instruction or is primarily used for such purposes.” (Emphasis added.) (*McKenzie v. Johnson* (1983), 98 Ill. 2d 87, 99, 74 Ill.Dec. 571, 577, 456 N.E.2d 73, 79.)

It is noteworthy that under *McKenzie v. Johnson* it is not necessary that a minister’s duties require him or her to live in the parsonage; rather the exemption is applicable if “the pastor’s religious duties require him to live *in close proximity to the church*.” (Emphasis added.) (*McKenzie v. Johnson* (1983), 98 Ill. 2d 87, 99, 74 Ill.Dec. 571, 577, 456 N.E.2d 73, 79. Contra *Lutheran Child & Family Services v. Department of Revenue* (1987), 160 Ill. App. 3d 420, 425, 112 Ill.Dec. 173, 177, 513 N.E.2d 587, 591.) Because the

religious aims of TEAM as a missionary agency differ from the religious aims of a local church, the *McKenzie v. Johnson* test for the applicability of the exemption to a parsonage provided for the pastor of a local church does not directly apply in the case at bar. However, it does guide our analysis of the issue.

TEAM, 164 Ill. App. 3d at 443-44, 517 N.E.2d at 1186.

There can be no doubt that the TEAM court analyzed the statute that was in effect in 1982. TEAM, 164 Ill. App. 3d at 443-44, 517 N.E.2d at 1186. Thus, the TEAM court's rejection of the Department's argument in that case cannot be considered an interpretation of the legislature's 1984 amendment to PTC § 19.2. Nor can there be any dispute that, after 1984, the Illinois General Assembly essentially agreed with the argument that the TEAM court rejected when interpreting the text of a prior version of PTC § 19.2 — that property owned by a religious organization and used as a residence should be considered to be used exclusively for religious purposes when “the ... persons who perform religious related activities shall, as a condition of their employment or association, reside in such [facilities].” P.A. 84-1250, Art. II, § 1, eff. August 4, 1984. The plain text of the statute in effect in 2008 makes clear that, at least for property used as “[a] parsonage, convent or monastery or other housing facility,” the legislature intended the scope of the exemption described in § 15-40(b) to be limited to property that is primarily used by “persons who perform religious related activities” and when such persons “shall, as a condition of their employment or association, reside in the facility.” 35 ILCS 200/15-40(b); *see also Chicago Bar Ass'n. v. Department of Revenue*, 163 Ill. 2d 290, 301, 644 N.E.2d 1166, 1171-72 (1994) (“[T]axation is the rule. Tax exemption is the exception. Article IX, section 6 (Ill. Const.1970, art. IX, § 6), and any statutes

enacted under its provisions must be resolved in favor of taxation.”).

Since the Illinois General Assembly significantly narrowed the scope of the exemption authorized by PTC 15-40, by defining when property owned by a religious organization and used as “[a] parsonage, convent or monastery or other housing facility” is exclusively used for religious purposes, the issue here is easier to resolve. The evidence admitted at hearing shows that the property was not used by any person fitting the legislature’s express condition for property to be considered to be exclusively used for religious purposes. 35 **ILCS** 200/15-40(b). Thus, the family’s use of the property for residential purposes predominated over any claimed, yet unproven, religious use of the property. *See McKenzie*, 98 Ill. 2d at 99-100, 456 N.E.2d at 79.

For purposes of PTC § 15-40(b), moreover, it simply does not matter that the Church allowed the family to reside on the property for benevolent reasons, regardless that those reasons may be perfectly consistent with the Church’s tenets. *See Applicant Ex. 1; Tr. p. 16 (Badal); Fairview Haven v. Department of Revenue*, 153 Ill. App. 3d 763, 506 N.E.2d 341 (4th Dist. 1987) (“the practice of charity, kindness to other persons and ... the practice of all virtues are encouraged by religious organizations; however, it cannot be stated that they are religious purposes within commonly accepted definitions of the word.”) (*construing Yakima First Baptist Homes, Inc. v. Gray*, 82 Wash. 2d 295, 510 P.2d 243 (1973)). The legislature has determined when property owned by a religious organization, and used as housing, is exclusively used for religious purposes, and the Church’s use of the property here does not satisfy the express conditions clearly stated in the statute. 35 **ILCS** 200/15-40(b). Finally, the Church asserts only the exemption authorized by § 15-40 of the PTC. *See Department Ex. 1, passim; Tr. pp. 5-6 (opening*

statement), 28-29 (closing argument).

Conclusion:

I conclude that the Church has not satisfied its burden to show that the property was actually being used primarily for religious purposes during 2008. Therefore, I recommend that the Director finalize the Department's tentative denial of the Church's application for a property tax exemption, and that the property remain taxable for 2008.

Date: October 6, 2009

John E. White
Administrative Law Judge