

**PT 11-12**  
**Tax Type: Property Tax**  
**Issue: Religious Ownership/Use**

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

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**JACOB'S WELL OF FOX VALLEY,**  
  
**APPLICANT**

**v.**

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

**Docket No: 10-PT-0021 (09-47-37)**

**Real Estate Exemption**

**For 2009 Tax Year**  
**P.I.N. 01-23-400-012**

**Kendall County Parcel**

**Kenneth J. Galvin**  
**Administrative Law Judge**

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**RECOMMENDATION FOR DISPOSITION**

**APPEARANCES:** Mr. Daniel Kramer, Law Offices of Daniel Kramer, on behalf of Jacob's Well of Fox Valley; Mr. John Alshuler, 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 Kendall County Parcel Index Number 01-23-400-012 (hereinafter the "subject property"), qualifies for exemption from 2009 real estate taxes under 35 ILCS 200/15-40, wherein "[a]ll property used exclusively for religious purposes" is exempted from real estate taxation.

The controversy arises as follows: On November 12, 2009, Jacob's Well of Fox Valley (hereinafter "Jacob's Well" or the "applicant") filed an Application for Property

Tax Exemption with the Kendall County Board of Review (hereinafter the “Board”). The Board reviewed the application of Jacob’s Well and recommended to the Illinois Department of Revenue (hereinafter the “Department”) that a partial year exemption be granted. The Department rejected the Board’s recommendation in a determination dated December 17, 2009, which denied the exemption finding that the subject property was not in exempt use in 2009. Dept. Ex. No. 1. On January 20, 2010, Jacob’s Well filed a request for a hearing as to the denial and presented evidence at a formal evidentiary hearing on February 4, 2011. Following submission of all evidence and a careful review of the record, it is recommended that the Department’s determination be affirmed.

**FINDINGS 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, or being prepared for exempt use, in 2009. Tr. pp. 6-7; Dept. Ex. No. 1.
2. On November 5, 2008, Masoncorp, Inc. entered into an agreement with Jacob’s Well to serve as construction manager of the project to build a church on the subject property. The agreement states that “[A]fter execution of this document, the parties will proceed to the completion of an AIA Construction Manager Contract to complete this agreement.” Tr. pp. 4, 10; App. Ex. No. 1.

**CONCLUSIONS OF LAW:**

An examination of the record establishes that Jacob’s Well has not demonstrated by the presentation of testimony, exhibits and argument, evidence sufficient to warrant an

exemption of the subject property for the 2009 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 (1<sup>st</sup> Dist. 1983). In accordance with its constitutional authority, the General Assembly enacted section 15-40 of the Property Tax Code which exempts “[a]ll 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 (4<sup>th</sup> Dist. 1933).

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).

The Department’s December 17, 2009, determination denying the instant exemption request was based solely on the Department’s conclusion that the subject property was not in exempt use in 2009. Because the Department denied the exemption solely on lack of exempt use, it is implicit that the Department determined that Jacob’s Well owned the subject property and qualified as a “religion.” These conclusions were unchallenged in the instant proceeding.

However, the evidence presented at the evidentiary hearing does not allow me to conclude that Jacob’s Well was in the process of developing and adapting the subject property for eventual exempt use. No one testified at the evidentiary hearing on behalf of Jacob’s Well. The transcript of this case is 13 pages. Counsel for Jacob’s Well offered two documents into evidence. On November 5, 2008, Masoncorp, Inc. entered into an

agreement with Jacob's Well to serve as construction manager of the project to build a church on the subject property. This agreement is signed by representatives of Jacob's Well and Masoncorp. The agreement states that "[A]fter execution of this document, the parties will proceed to the completion of an AIA Construction Manager Contract to complete this agreement." Tr. pp. 4, 10; App. Ex. No. 1. There is no evidence in the record that Jacob's Well and Masoncorp ever "proceeded to the completion" of an AIA Construction Manager Contract to complete the agreement.

The only other document admitted into evidence was a "Detail Transaction File List" of Counsel's billing to Jacob's Well. The first page says the client is "Zeiter/Rocky." The record contains no information as to who this is and their relationship, if any, with Jacob's Well. Pages two through four of the billing show the client as "Jacob's Well." There are 19 entries in this billing for 2009. There is no indication on the billing that the items billed are for the subject property. For example, on August 3, 2009, Counsel billed for "Preparation for and appearance at Plano Plan Commission for preliminary plat approval." There is no way for me to tell from the billing that this appearance at the Commission relates to the subject property. No one testified about the individual entries in the billing. The billing statement is evidence of Counsel's billings to Jacob's Well. However, it is not evidence of development and adaptation of the subject property for exempt use.

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 (1<sup>st</sup> 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 (4<sup>th</sup> Dist. 1994). The agreement naming Masoncorp as construction manager and Counsel's billing statement cannot substitute for testimony, cross-examination and documentary evidence showing actual work done on the subject property. I conclude that Jacob's Well has not proven, by clear and convincing evidence, that the subject property was in the process of development and adaptation for exempt use in 2009.

WHEREFORE, for the reasons stated above, it is recommended that the Department's determination which denied the exemption from 2009 real estate taxes on the grounds that the subject property was not in exempt use should be affirmed and Kendall County Parcel identified by P.I.N. 01-23-400-012 should not be exempt from property taxes in 2009.

ENTER:

May 4, 2011

Kenneth J. Galvin  
Administrative Law Judge