

**PT 02-45**

**Tax Type: Property Tax**

**Issue: Religious Ownership/Use**

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

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**SPIRITUAL ASSEMBLY OF  
THE BAHA'IS,  
APPLICANT**

**v.**

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

**00-PT-0037 (Springfield)**

**Real Estate Tax Exemption**

**For 1999 Tax Year**

**P.I.N. 001-14-20-127-013 and 012**

**Peoria County Parcels**

**Kenneth J. Galvin**

**Administrative Law Judge**

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**RECOMMENDATION FOR DISPOSITION**

**SYNOPSIS:**

This proceeding raises the issue of whether the subject property, identified by Peoria County Parcel Index Numbers 001-14-20-127-013 and 012 (hereinafter the "subject property") qualifies for exemption from 1999 real estate taxes under 35 ILCS 200/15-40, which exempts, "[a]ll property used exclusively for religious purposes," and 35 ILCS 200/15-125, which exempts parking areas, not leased or used for profit, and owned by a religious institution.

The controversy arises as follows: On November 12, 1999, The Spiritual Assembly of the Baha'is of Peoria, Illinois (hereinafter the "Spiritual Assembly" or "applicant") filed a Real Estate Exemption Complaint for the subject property with the

Board of Appeals/Board of Review of Peoria County (hereinafter the “Board”). Dept. Ex. Nos. 1 and 2. The subject property consists of a lot containing a house to be used for worship and classes and a storage shed (P.I.N. 001-14-20-127-013) and an adjacent vacant lot used for parking (P.I.N. 001-14-20-127-012). The Board reviewed the applicant’s complaint and subsequently recommended to the Illinois Department of Revenue (hereinafter the “Department”) that 199.5 square feet of the house and a proportionate amount of land on P.I.N. 001-14-20-127-013 be exempt for 21% of the 1999 assessment year and that the vacant lot (P.I.N. 001-14-20-127-012) be denied an exemption as property not in exempt use.

On May 11, 2000, the Department accepted the Board’s recommendation. Dept. Ex. No. 3. On May 22, 2000, the applicant filed a timely request for a hearing as to the denial and presented evidence at a formal hearing on April 26, 2002, with Caroline Delaney, secretary of the Spiritual Assembly, and Elliott Fox providing oral testimony. Following submission of all evidence and a careful review of the record, it is recommended that the entire P.I.N. 001-14-20-127-013 be exempt for 21% of the 1999 tax year and that P.I.N. 001-14-20-127-012 be denied an exemption for the 1999 tax year.

**FINDINGS OF FACT:**

1. Dept. Ex. Nos. 1, 2 and 3 establish the Department’s jurisdiction over this matter and its position that 199.5 square feet of the house and a proportionate amount of land on P.I.N. 001-14-20-127-013 of the subject property was in exempt use for 21% of the 1999 tax year.
2. The Spiritual Assembly of Peoria is exempt from Retailers’ Occupation Tax in Illinois. Tr. p. 12; App. Ex. No. 4.

3. The Spiritual Assembly acquired ownership of the subject property by warranty deed dated October 15, 1999. The two lots are next to an existing Baha'i Center. Tr. pp. 6-7, 13; App. Ex. Nos. 1, 5 and 6.
4. When the subject property was purchased, the house was in disrepair. The applicant pulled down old curtains, washed the walls and painted. Tr. p. 8.
5. The house contains an "assembly room." In 1999, the elected body of the Baha'i community of Peoria met in this room. There are nine members on the assembly. Tr. p. 8; App. Ex. Nos. 2 and 7.
6. In 1999, the applicant's archives were moved into the "archives room" and the "meditation and discussion room." The archives contained records of events that were important to the history of the Spiritual Assembly in Peoria. Tr. pp. 8-9; App. Ex. No. 2.
7. In 1999, the "secretary's room" was used to store cans of paint and brushes and repair supplies. Tr. p. 10; App. Ex. No. 2.
8. In 1999, the carpeting in the "activity room" was ripped up and lawn furniture and garbage cans were stored there. Tr. pp. 10-11; App. Ex. No. 2.
9. The storage shed was used to store mowers and the tools that were being used to repair the house. Tr. p. 14; App. Ex. No. 7.

**CONCLUSIONS OF LAW:**

An examination of the record establishes that the applicant has demonstrated, by the presentation of testimony, exhibits and argument, evidence sufficient to warrant exempting P.I.N. 001-14-20-127-013 for 21% of the 1999 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...” and section 15-125, which exempts parking areas, not leased or used for profit, and owned by a religious institution. 35 ILCS 200/15-40 and 35 ILCS 200/15-125, respectively. 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), (hereinafter “McCullough”). 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 May 11, 2000, determination denying the instant exemption request, with the exception of the 199 square feet of the house and a proportionate amount of land, was based solely on the Department’s conclusion that the subject property was not in exempt use in 1999. Because the Department denied the exemption solely on lack of exempt use, it is implicit that the Department determined that applicant owned the subject property and qualified as a “religion.” These conclusions remain unchallenged in the instant proceeding. Accordingly, the only real issue is whether the subject property was actually and exclusively used for exempt purposes in 1999.

**P.I.N. 001-14-20-127-013:** I conclude that actual development and adaptation of the house and storage shed on the subject property for exempt use began on October 15, 1999. Ms. Delaney testified at the evidentiary hearing that the house would be used in a similar manner as the existing Baha'i Center: "It will be used for worship, prayer, meditation and youth and children's education classes." Tr. p. 19. In order to get the property ready for its intended use, the applicant pulled down old curtains, washed the walls and started painting. Tr. p. 8. Carpeting was ripped up. Tr. pp. 10-11. Areas of the house and shed were used for storage of the supplies that were being used for the repair work done on the subject property. Tr. pp. 10, 14.

In addition to preparing the property for use, the applicant moved its archives into two rooms in the house. These archives contained records of events that were important to the history of the Spiritual Assembly. Tr. pp. 8-9. The storage of the archives in the house constitutes use of the property for religious purposes as the archives are important to preserving the history and traditions of the religion. The repair work on the subject property and the use of the property for storage of the applicant's archives demonstrate that the project had gone beyond a mere intention to convert the property into a suitable area for worship and classes, and actually constituted development and adaptation of the house for exempt religious use. Accordingly, I conclude that the entire P.I.N. 001-14-20-127-013 should be exempt from property taxes for 21% of the 1999 tax year.

**P.I.N. 001-14-20-127-012:** There was no testimony at the evidentiary hearing as to any work done on this property during the 1999 tax year. A photograph of this P.I.N. admitted into evidence shows a vacant lot with grass. App. Ex. No. 3. There was no

evidence that the vacant lot was being developed and adapted for parking. There are no areas of ingress and egress shown in the photograph and there is no gradation of the lot. There was no testimony as to whether the lot had to be rezoned to accommodate parking or whether any zoning requests were made to the county in 1999.

Mr. Fox testified at the evidentiary hearing that cars were parked on the vacant lot for business meetings and that the vacant lot would sometimes be used for overflow parking. Tr. pp. 17-18. Ms. Delaney testified that there was one religious service held on the vacant lot in 1999, and that the grass on the lot was cut. Tr. p. 16. The photograph of the lot clearly shows that it is vacant, grassy land. There is simply no physical evidence that it is property appropriate for parking uses. Based on the testimony and evidence admitted, I am unable to conclude that the vacant lot was in the process of development and adaptation for eventual exempt use in 1999.

WHEREFORE, for the reasons stated above, I recommend that P.I.N. 001-14-20-127-013 be exempt from property taxes for 21% of the 1999 tax year which represents the period from October 15, 1999, through December 31, 1999, during which the property was in the process of development and adaptation for religious use and that the Department's determination that P.I.N. 001-14-20-127-012 was not in exempt use during 1999 should be affirmed.

ENTER:

May 30, 2002

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Kenneth J. Galvin  
Administrative Law Judge