

**PT 04-14**

**Tax Type: Property Tax**

**Issue: Religious Ownership/Use**

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

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**REHOBOTH  
MENNONITE CHURCH,  
APPLICANT**

**v.**

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

**No: 03-PT-0007  
(02-46-0028)  
PIN: 19-23-100-008**

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**RECOMMENDATION FOR DISPOSITION**

**APPEARANCES:** Mr. Jerome C. Shapiro, attorney at law, on behalf of the Reboth Mennonite Church (the "Applicant" or the "Church"); Ms. Brenda Gorski, Assistant State's Attorney for the County of Kankakee, on behalf of the Kankakee County Board of Review (the "Board"); Mr. Gary Stutland, Special Assistant Attorney General, on behalf of the Illinois Department Of Revenue (the "Department").

**SYNOPSIS:** This matter presents the limited issue of whether any part of real estate identified by Kankakee County Parcel Index Number 19-23-100-008 (the "subject property") was "used exclusively for religious purposes," as required by Section 15-40 of the Property Tax Code (35 ILCS 200/1-1, *et seq.*) during the 2002 assessment year. The underlying controversy arises as follows:

The Church filed an Application for Property Tax Exemption with the Board on March 15, 2002. Stipulated Group Ex. No. 1, Document B. The Board reviewed this Application and recommended that the requested exemption be denied. *Id.* The Department later adopted the Board's recommendation by issuing an initial

determination, dated October 18, 2002, which found that the subject property is not in exempt use. Stipulated Group Ex. No. 1, Document C.

The Church filed an appeal to this denial and later presented evidence at a formal evidentiary hearing, at which the Board and the Department also appeared. Following a careful review of the record made at hearing, I recommend that the Department's initial determination be affirmed.

**FINDINGS OF FACT:**

1. The Department's jurisdiction over this matter and its position herein are established by the admission of Stipulated Group Ex. No. 1, Documents B, C.
2. The Department's position in this matter is that the subject property is not in exempt use. Stipulated Group Ex. No. 1, Document C.
3. The subject property is located in St. Anne, IL and improved with a one story, 1,056 sq. foot house and a separate one story, 100 sq. ft. garage. Stipulated Group Ex. No. 1, Doc. B; Tr. p. 13.
4. The subject property is located ¼ of a mile west of applicant's main church facility, part of which was exempted from real estate taxation pursuant to the Department's determination in Docket Number 84-46-77. Stipulated Group Ex. No. 1, Documents I, K.
5. The applicant obtained ownership of the subject property by means of a warranty deed dated March 20, 1987. Stipulated Group Ex. No. 1, Document E.
6. The applicant did not have an ordained clergy person functioning as its spiritual leader throughout 2002. Tr. pp. 19, 42-43.

7. Elder Rose Covington, a lay person who had completed courses at the Mennonite seminary in Indiana and held a master's degree in counseling, functioned as applicant's spiritual leader throughout 2002. Tr. pp. 13-14, 37, 41-42.
8. Elder Covington did not reside at the subject property during 2002. Tr. pp. 14, 37.
9. The Affidavit of Use that Elder Covington included within the Church's initial submission to the Department indicates that:
  - A. the subject property had been used as a parsonage prior to 2002 but was not used for that purpose during 2002;
  - B. the subject property was used as a "Mission House" for homeless families throughout 2002;
  - C. the families that reside in this "Mission House" attend church, have other unspecified church responsibilities and pay a "donation" of \$300 per month for the upkeep and general maintenance of the "Mission House."

Stipulated Group Ex. No1, Document H.

10. The Parsonage/Convent Questionnaire that Elder Covington included within the Church's initial submission to the Department states, *inter alia*, that the families who lived in the "Mission House" were not required live in the "Mission House" as a condition of their "employment or association" with the Church. Stipulated Group Ex. No1, Document K; Tr. pp. 18-19.
11. The Questionnaire further indicates that although the families were not required to live in the "Mission House" for these purposes, they did engage in Bible studies, attend prayer meetings, undergo counseling, participate in unspecified club and group

activities, perform unspecified “administrative” duties and oversee the property, while they lived in the mission house. *Id.*

12. The detached garage area was used for storage throughout 2002. However, the Church did not store any of its own items in the garage during that time. Tr. pp. 28-29.

**CONCLUSIONS OF LAW:**

Article IX, Section 6 of the Illinois Constitution of 1970 provides 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.

Pursuant to Constitutional authority, the General Assembly enacted Section 15-40 of the Property Tax Code, 35 **ILCS** 200/1-1 *et seq*, wherein the following are exempted from real estate taxation:

**Sec. 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.

The word "exclusively" when used in Section 15-40 and other property tax 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. 1993). The "religious purposes" contemplated by Section 15-40 are those which involve the use of real estate by religious societies or persons as a stated places 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).

Like all provisions exempting real estate from taxation, Section 15-40 must be strictly construed against exemption, with all unproven facts and debatable questions resolved in favor of taxation. People ex rel. Nordland v. Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). Therefore, applicant bears the burden of proving, by a standard of clear and convincing evidence, that the property that it is seeking to exempt falls within the provisions under which the exemption is sought. *Id.*

The clear and convincing standard is met when the evidence is more than a preponderance but does not quite approach the degree of proof necessary to convict a

person of a criminal offense. Bazydlo v. Volant, 264 Ill. App.3d 105, 108 (3<sup>rd</sup> Dist. 1994). Thus, “clear and convincing evidence is 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.” In the Matter of Jones, 285 Ill. App.3d 8, 13 (3<sup>rd</sup> Dist. 1996); In re Israel, 278 Ill. App.3d 24, 35 (2<sup>nd</sup> Dist. 24, 35 (2<sup>nd</sup> Dist. 1996)); In re the Estate of Weaver, 75 Ill. App.2d 227, 229 (4<sup>th</sup> Dist. 1966).

This record leaves several questions as to whether the subject property was primarily used for any of the purposes necessary to qualify it for exemption under Section 15-40. Most of these result from the overall condition of the record, which as I shall demonstrate below, is unacceptably vague in certain critical areas. Other questions, however, can be traced to the applicant’s failure to submit proper supporting documentation, while still others arise from the scarce amount of documentation that the applicant did submit.

In addition, there are at least two instances wherein the applicant’s own evidence does not support the exemption that it seeks. The first instance pertains to the detached garage area, while the second concerns whether the one story house (the “house”) qualifies for exemption as a “parsonage” under Section 15-40(b).

The garage area and house are separately identifiable components of the same property. Thus, it is theoretically possible to exempt the component that is actually used for exempt purposes and subject the other component to taxation. Illinois Institute of Technology v. Skinner, 49 Ill. 2d 59, 64 (1971). However, the applicant must still prove that at least one of the components is in exempt use in order to prevail on this theory.

**A. Garage Area**

The applicant has not proven that the garage is in exempt use. Ancillary facilities, such as storage areas or detached garages, may be exempted where the applicant proves that their use is “reasonably necessary” to facilitate another specifically identifiable exempt use. Memorial Child Care v. Department of Revenue, 238 Ill. App. 3d 985, 987 (4<sup>th</sup> Dist. 1992); Evangelical Hospital Ass’n. v. Novak, 125 Ill. App.3d 439 (2<sup>nd</sup> Dist. 1984); Evangelical Hospitals Corp. v. Illinois Department Of Revenue, 223 Ill. App.3d 225, 231 (2<sup>nd</sup> Dist. 1992).

The garage area currently at issue was used for storage throughout the tax year in question. Tr. p. 28. However, the Church did not store any of its own items in the garage during that time. Tr. p. 29. For this reason, whatever storage purposes the garage may have been used for were not “reasonably necessary” to facilitate the “religious” use of any other property that the Church used. Therefore, the applicant cannot obtain an exemption for the garage area because the Church has failed to prove that it was in exempt use.

**B. One Story House**

The Church has also failed to prove that the house is in exempt use. As a general matter, houses or other residential facilities do not qualify for tax exempt status unless they are: (a) are owned and used in the manner prescribed by Section 15-40(b) of the Property Tax Code (35 ILCS 200/15-40(b)), which governs the exemption of parsonages; or, (b) satisfy the common law criteria for the exemption of properties that serve as residential housing for employees of tax exempt organizations (McKenzie v. Johnson, 98 Ill.2d 89, 98 (1983); Benedictine Sisters of the Sacred Heart v. Department of Revenue,

155 Ill. App.3d 325 (2<sup>nd</sup> Dist. 1987); Lutheran Child and Family Services of Illinois v. Department of Revenue, 160 Ill. App.3d 420 (2<sup>nd</sup> Dist. 1987); Cantigny Trust v. Department of Revenue, 171 Ill. App. 3d 1082 (2<sup>nd</sup> Dist. 1988); Girl Scouts of DuPage County Council, inc. v. Department of Revenue, 189 Ill. App.3d 858 (1989)); or, (c) are primarily used for purposes that are “reasonably necessary” to facilitate the applicant’s tax exempt use of other property. DuPage County Board of Review v. Department of Revenue, et al., 339 Ill. App.3d 230 (2<sup>nd</sup> Dist. 2003).

**1. Exemption as a Parsonage (35 ILCS 200/15-(b))**

In order to qualify for exemption as a parsonage, the property in question must meet all of the following requirements: first, the property must be owned by a duly qualified church, religious organization or religious denomination. 35 ILCS 200/15-40(b)(1), (2), (3); second, the church, religious organization or religious denomination must use the property to provide housing facilities for its ministers or other clergy that serve its faith community. 35 ILCS 200/15-40(b); and third, the church, religious organization or religious denomination must require the clergy person who performs religious activities for its faith community to reside in the residential facility as a condition of the clergy person’s employment or association with the faith community. *Id.*

In this case, the parties do not dispute that the applicant qualifies as the type of “religious” entity whose property is subject to exemption under the parsonage provision if used for appropriate purposes. Nor do they dispute that the applicant owned the house in question throughout 2002. Therefore, only the second and third requirements, which pertain to use, are at issue herein.

Those requirements can be subdivided into the following inquiries: first, whether the person or persons who reside in facility are ministers or other clergy who serve the applicant's faith community; second, whether the property is actually used to provide housing facilities for such ministers or other clergy; and third, whether the applicant actually requires the minister or other clergy who serve its faith community to reside in the facilities as a condition of their "employment or association" with the applicant. 35 **ILCS 200/15-40(b)**.

The house currently at issue does not satisfy any of the above requirements, as the lay person who acted as the applicant's spiritual leader, Elder Covington, did not live in the house at any point during 2002. Tr. pp. 14, 19, 37, 42, 43. Furthermore, because the applicant did not have any other clergy person serving its faith community throughout 2002 (*id.*), the house was not actually used to provide the type of housing facilities necessary to qualify it as a "parsonage" under Section 15-40(b). However, even if it were used as a housing facility for one of applicant's ministers, the Parsonage Questionnaire clearly states that those who lived in the house were not required to do so as a condition of their "employment or association" with the applicant. Stipulation Group Ex. No. 1, Document K.

The Church did not repudiate any of the statements contained in the Parsonage Questionnaire at hearing. Tr. pp. 18-19. Nor did it offer any evidence to contradict any of the above analysis, save for an allegation that the house had been used as a "parsonage" in tax years prior to 2002. Stipulation Group Ex. No. 1, Document H. This, however, is not relevant to the present inquiry, which focuses on whether the house was used as a "parsonage" during 2002, because each tax year constitutes a separate cause of

action for exemption purposes. People ex rel. Tomlin v. Illinois State Bar Ass'n, 89 Ill. App.3d 1005, 1013 (4<sup>th</sup> Dist. 1980). Thus, for all the above stated-reasons, that part of the Department's initial determination which denied the house exemption from 2002 real estate taxes under 35 ILCS 200/15-40(b) should be affirmed.

## **2. Exemption as Housing for Residential Employees**

Illinois case law has developed two alternative tests for the exemption of properties occupied by residential employees of tax exempt organizations. The first is that the residential employee must both: (a) perform one or more specifically identifiable exempt functions, such as educational or religious duties, in the residence, and; (b) be required by those same exempt duties to live in the residence. McKenzie v. Johnson, *supra*; Benedictine Sisters of the Sacred Heart v. Department of Revenue, *supra*; Lutheran Child and Family Services of Illinois v. Department of Revenue, *supra*; Cantigny Trust v. Department of Revenue, *supra*; Girl Scouts of DuPage County Council, inc. v. Department of Revenue, *supra*.

The second alternative test is that the primary use of the residential facility is one wherein the residential employee actually performs job duties that further the institution's exempt purpose within the confines of the housing facility itself. *Id*; DuPage County Board of Review v. Department of Revenue, et al., 339 Ill. App.3d 230 (2<sup>nd</sup> Dist. 2003). If this is not the case, or the facility fails to qualify for exemption under the first alternative test, then the residence will not qualify for exemption even if it is incidentally used for exempt purposes. DuPage County Board of Review, *supra*; Lutheran Child and Family Services of Illinois v. Department of Revenue, 160 Ill. App.3d 420 (2<sup>nd</sup> Dist. 1987).

The portion of Elder Covington's testimony which indicated that the homeless families who occupied the house during 2002 mowed the lawn and performed other unspecified upkeep duties while living in the house (Tr. pp. 27-28) suggests that the house could be akin to an employed groundskeeper's residence. However, this record does not contain sufficient evidence to prove that the families who lived in the house were in fact serving as residential employees.

For instance, the record does not contain any work schedules, employment contracts or other evidence that establishes crucial indicia of an employment relationship, such as whether or to what extent the applicant exercised direction and control over the manner in which the families performed their maintenance duties. Nor does the record disclose whether the families received any type of remuneration, monetary or otherwise, for their services. Neither does it reveal whether use of the house was part of any remuneration the families might have received. Absent all of this information, the record simply does not support exemption under either one of the two alternative tests.

Moreover, the fact that the families are not required to live in the house expressly negates any possibility of exemption under the first of these tests. Thus, to the extent that the record does not contain enough evidence to support exemption under the second test, I must conclude that the house fails to qualify as a tax-exempt housing facility for residential employees. Therefore, the only remaining theory under which applicant may possibly prevail is that its use of the house was "reasonably necessary" to facilitate another specifically identifiable exempt use.

### 3. Reasonably Necessary

In order for the Church to prevail on this theory, it must prove, by the necessary clear and convincing evidence, that the house: (a) is “exclusively” or primarily used for purposes that satisfy the “reasonably necessary” standard (35 ILCS 200/15-40(a); Memorial Child Care v. Department of Revenue, *supra*; Evangelical Hospital Ass’n. v. Novak, *supra*; Evangelical Hospitals Corp. v. Illinois Department Of Revenue, *supra*); and, (b) is not being “used with a view to profit” in violation of Section 15-40(a). 35 ILCS 200/15-40(a). For the following reasons, I conclude that the record does not contain enough evidence to prove either requirement by clear and convincing evidence.

As an initial matter, it is briefly noted that the State is constitutionally prohibited from inquiring into the “truth or verity” of the beliefs that applicant espouses. United States v. Ballard, 322 U.S. 78, 86 (1944). However, this case is not about whether or to what extent the applicant’s Christian-oriented beliefs serve to fulfill the goals of its ministry, which include preaching the Gospel and assisting those in need. Tr. pp. 14-15. Rather, it is strictly about a very limited and secular issue into which the State *is* authorized to inquire, that being whether the evidence that the Church presented at hearing rises to the level of clear and convincing evidence that is necessary to satisfy the statutory exempt use requirement. Fairview Haven v. Department of Revenue, 153 Ill. App. 3d 763, 773-775 (4<sup>th</sup> Dist., 1987).

Once again, “clear and convincing evidence is 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.” In the Matter of Jones, *supra*; In re Israel, *supra*; In re the Estate of Weaver, *supra*. The Affidavit of Use and Parsonage/Convent Questionnaire

(Stipulation Group Ex. No. 1, Documents H and K) do contain some information that suggest exempt use consistent with the Christian-oriented tenets that applicant espouses as part of its ministry. However, absent other supporting information, these documents' mere statements that the house is being used as a "Mission House for homeless families," are much too conclusory to remove any doubts from my mind as to whether the house is in fact *primarily* used to accomplish the goals of that ministry.

This is especially true in a case, such as this one, where the evidence presented raises the inference of an alternative, non-exempt use. The Affidavit of Use clearly states that those who live in the house pay applicant what it considers to be a "donation" of \$300.00 per month while living in the house. Stipulation Group Ex. No. 1, Doc. H. Irrespective of whether the applicant considers this \$300.00 to be a "donation" or a monthly rental payment, the ultimate fact remains that the applicant derives income from the house by collecting these payments. This, therefore, raises the inference that the house is used "with a view to profit" in violation of Section 15-40(a) because it is primarily used for the non-exempt purpose of producing income for its owner. People ex. rel. Baldwin v. Jessamine Withers Home, 312 Ill. 136, 140 (1924); Salvation Army v. Department of Revenue, 170 Ill. App.3d 336, 344 (2nd Dist. 1988).

The Church might have negated this inference if it had submitted a financial statement detailing the operating and other expenses that it incurred for the house. The Church, however, did not submit such a statement even though Elder Covington admitted on cross-examination that the Church kept a financial report for the tax year currently in question. Tr. pp. 43-44. Nor did the applicant submit any other evidence that provides the quantum of evidence necessary to remove any reasonable doubts as to whether the

house was “used with a view to profit.” Therefore, the evidence which applicant did present, which consisted mostly of Elder Covington’s testimony, does not rise to the level of clear and convincing evidence that is necessary to sustain its burden of proof. In the Matter of Jones, supra; In re Israel, supra; In re the Estate of Weaver, supra.

The statements contained in the Affidavit of Use and Elder Covington’s testimony which indicate that the applicant applied whatever “donation” income it received toward the upkeep of the subject property do not alter this conclusion. Illinois courts have consistently held that it is the use to which the property *itself* is actually devoted, and not the use made of any income derived *from* the property, that is decisive for present purposes. City of Lawrenceville v. Maxwell, 6 Ill.2d 42, 48 (1955); Marshall County Airport Board v. Department of Revenue, 163 Ill. App.3d 874, 876 (3<sup>rd</sup> Dist. 1987).

At best, this record is inconclusive as to whether the house was used “with a view to profit” in violation of Section 15-40(a). In the exemption context, this and all other inconclusive matters must be resolved in favor of taxation. People ex rel. Nordland v. Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). Nevertheless, the record contains other weaknesses that make it difficult for me to resolve the more fundamental issue of whether the house was in fact primarily used for “religious” purposes that were “reasonably necessary” to fulfill applicant’s organizational objectives.

Elder Covington testified that the house was used for prayer meetings at a “scheduled time.” Tr. p. 27. However, she did not identify exactly when this “scheduled time” took place. Nor did the applicant submit any documentary evidence establishing the schedule that Elder Covington referenced in her testimony. Furthermore, adjectives

such as “sometimes,” “as the need arises” or “periodically,” which Elder Covington used to describe the frequency with which Bible studies, counseling and other similar activities took place at the house are too indefinite to constitute the type of clear and convincing evidence that is necessary to prove that the house was primarily used for “religious” purposes. Tr. pp. 26-27, 81-82.

This is especially true where, as here, Elder Covington specifically admitted that she could not remember exactly how many times Bible studies were held at the subject property during 2002 (Tr. pp. 51-52) and the Affidavit of Use (Stipulation Group Ex. No. 1, Document H) does not provide any of the necessary specifics. In light of all these deficiencies, the statements that appear in the Parsonage Questionnaire (Stipulation Ex. No. 1, Document K), which indicate that prayer meetings and Bible studies took place on a “daily” basis, are not supported by the remaining evidence of record. Therefore, even if only for the sake of argument, I could discount the evidence suggesting that the house was “used with a view to profit,” the record would still contain numerous failures of proof relative to the statutory “exclusive” or primary use requirement.

These failures of proof are compounded by the total absence of any documentary evidence proving the terms and conditions under which the applicant allowed homeless families to stay in the house. I take administrative notice that Section 2 of the Illinois Frauds Act, 740 **ILCS** 80/0.01, *et seq.*, expressly provides that:

No action shall be brought to charge any person upon any contract for the sale of lands, tenements or hereditaments or any interest in or concerning them, for a longer term than one year, unless such contract or some memorandum or note thereof shall be in writing, and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorized in writing, signed by such party. This section shall not apply to sales for the enforcement

of a judgment for the payment of money or sales by any officer or person pursuant to a judgment or order of any court in this State.

740 **ILCS** 80/2

In Illinois, if a lease is unenforceable under the Statute of Frauds, or there exists no agreement to the contrary, but the tenant pays and the landlord accepts one or more monthly rental installments, the tenancy becomes one from month to month by operation of law. Mar v. Ray, 151 Ill. 340 (1894); Seidelman v. Kouvavus, 57 Ill.App.3d 350 (2<sup>nd</sup> Dist., 1978); Kachigian v. Minnm 23 Ill. App.3d 722 )1<sup>st</sup> Dist., 1974); 49 Am. Jur.2<sup>nd</sup> Landlord and Tenant §15.

The precise question of whether any oral arrangement that the Church may have had with the homeless families is enforceable under the Illinois Frauds Act is not at issue in this case. Nevertheless, the total absence of any writing which establishes the terms and conditions of whatever arrangement that the applicant may have had does have implications for lack of exempt use.

Section 9-207 of the Code of Civil Procedure (735 **ILCS** 5/1-101, *et seq.*) states in relevant part that the landlord may terminate a month to month tenancy “by 30 days’ notice, in writing, and may maintain an action for forcible entry and detainer or ejection.” 735 **ILCS** 5/9-207. More importantly, the landlord terminating a month to month tenancy need not give any reason for the termination unless the parties expressly agree to limit this aspect of the landlord’s authority in writing. Faris v. United States, 192 F.2d 53 (1951); United States v. Blumenthal, 315 F.2d 351 (1963).

This record does not contain a written instrument that limits the Church’s capacity to terminate the month to month tenancy that arises by operation of law herein. Consequently, the Church, as landlord, is under no legal or contractual obligation to

maintain that tenancy. Rather, subject only to the statutory notice requirements, the Church is perfectly free to terminate the tenancy on any number of grounds. Thus, in the absence of an appropriate written instrument to the contrary, these grounds could very well include failure to pay rentals or other similar reasons that are inconsistent with purposes that serve to accomplish the applicant's organizational objectives. Therefore, at minimum, the legal effect of the month to month tenancy that the Church created by allowing homeless families to stay in the house without a written lease raises doubts as to whether the house is primarily used for purposes that are "reasonably necessary" to fulfill such objectives.

Once again, all doubts that arise in the exemption context must be resolved in favor of taxation. People ex rel. Nordland v. Home for the Aged, *supra*; Gas Research Institute v. Department of Revenue, *supra*. However, even if these doubts did not exist, the record again fails to establish critical information about the extent to which the applicant actually used the house to house homeless families throughout the tax year currently in question, 2002.

Elder Covington testified that two families lived in the house during 2002. Tr. pp. 37, 73-74. Despite this, nothing in her testimony or the remaining evidence of record proves the exact length of time that either of these families stayed at the house. Without this information, it is entirely possible the families who lived there occupied the house for only very brief or transitional periods of time. Consequently, absent evidence of other exempt uses that the record does not contain, it is quite possible that the house was not actually used for any purpose, exempt or otherwise, during any periods when homeless families did not live there because it remained vacant.

In summary, the applicant has failed to prove by the requisite clear and convincing evidence that the house was primarily used for any of the purposes necessary to qualify it for exemption from 2002 real estate taxes under Section 15-40 of the Property Tax Code. Any other conclusion would, on this particular record, effectively relax the evidentiary standards in property tax cases to levels well below those required by state constitutional mandate in the first instance and below what is necessary to protect public treasuries from unwarranted lost revenue costs, in the second. Therefore, the Department's initial determination in this matter should be affirmed.

WHEREFORE, for all the aforementioned reasons, it is my recommendation that real estate identified by Kankakee County Parcel Index Number 19-23-100-008 not be exempt from 2002 real estate taxes.

Date: 4/22/2004

Alan I. Marcus  
Administrative Law Judge