

PT 04-17
Tax Type: Property Tax
Issue: Religious Ownership/Use

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

CHRIST COMMUNITY CHURCH,

APPLICANT

v.

THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS

No. 03-PT-0032

Real Estate Exemption

For 2002 Tax Year
P.I.N. 21-11-240-010

LaSalle County Parcel

Kenneth J. Galvin
Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

APPEARANCE: Mr. Thomas A. Karalis on behalf of Christ Community Church; Mr. Gary Stutland, 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 LaSalle County Parcel Index Number 21-11-240-010 (hereinafter the “property”) qualifies for exemption from 2002 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 March 3, 2002, Christ Community Church (hereinafter “applicant” or the “Church”) filed an Application for Property Tax

Exemption for tax year 2002 with the LaSalle County Board of Review (hereinafter the “Board”). On April 18, 2002, the Board recommended to the Illinois Department of Revenue (hereinafter the “Department”) that 21,600 square feet of the 26,400 square feet of the subject property be granted an exemption beginning November 29, 2001. On February 6, 2002, the Department rejected the Board’s recommendation and granted the Church an exemption for 100% of the 2002 assessment year for “the 2nd floor, the mezzanine & a proportionate amount of land.” Dept. Ex. No. 1. On April 8, 2003, the applicant filed a timely request for a hearing as to the denial of the exemption for the basement of the subject property.

On March 18, 2004, the applicant presented evidence at a formal hearing with Pastor John Nordstrom presenting oral testimony. Following submission of all evidence and a careful review of the record, it is recommended that 60% of the basement in the subject property be exempt from real estate taxes for the 2002 tax year.

FINDINGS OF FACT:

1. Dept. Ex. No. 1 establishes the Department’s jurisdiction over this matter and its position that the basement in the subject property was not in exempt use, or being prepared for exempt use in 2002. Tr. pp. 6-8; Dept. Ex. No. 1.
2. Christ Community Church is Christian nondenominational. John Nordstrom is the pastor of the Church and was involved in buying the land and building in 2001 on the subject property located at 807 LaSalle Street in Ottawa, Illinois. When the subject property was purchased, there were existing tenants in the building. Tr. pp. 9-10, 44.

3. The basement of the building is 8,800 square feet. “2me Reprographics” rented 3,600 square feet in the basement (40% of the square footage) from the Church on a month-to-month tenancy at \$800/month. “2me” moved out in late September, 2002, and had fully vacated the building by October 1, 2002. The last month that “2me” paid rent to the Church was September, 2002. Tr. pp. 10-11, 40-41; App. Ex. No. 2.
4. In October, 2002, after “2me” vacated the premises, the Church began removing the stairway to the basement that “2me’s” customers had used and closing up the floor. It took the Church one day to remove the stairs and one week to close up the floor. Tr. pp. 21-22, 30.
5. In order to facilitate the renovation of the mezzanine and second floor of the building, the Church used the 5,200 square feet of the basement (60% of the square footage) for storage of tools, a table saw, conduit, suspended ceiling tiles, paint, scaffolding and other building materials. The janitor used this area of the basement to store cleaning supplies. The heating and air conditioning systems in the basement were in disrepair and were removed in 2002. Sunday school supplies, tables, and props for children’s ministry were also stored in this area of the basement. Tr. pp. 21, 29-30, 35, 38, 42.
6. The building was not accessible to the handicapped when purchased, and one of the tenets of the Church is that the building must be accessible to all people. In mid to late 2002, the Church began adapting the building for an elevator to serve all floors. An engineering study of the existing elevator shaft was completed. The existing shaft had to be enlarged to hold the elevator and floor space on the mezzanine and second floor had to be removed. The ceiling of the basement had to be removed and the floor

of the basement had to be deepened. The elevator shaft preparation was done by Church volunteers. The elevator shaft was located in the 5,200 square foot area of the basement. The elevator was installed by Nu-Trend in October, 2003. Tr. pp. 15-16, 29, 31-32, 34; App. Ex. No. 1.

7. In June of 2002, the Church hired Francois Associates Architects to complete a schematic design plan for the basement level of the building. The plan, submitted July 1, 2002, shows the elevator shaft. Tr. pp. 17-19; App. Ex. Nos. 3 and 4.

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 an exemption for 5,200 square feet or 60% of the basement for the 2002 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 (1st 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 “not leased or otherwise used with a view to profit” 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), (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 (4th 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 determination of February 6, 2003, granting an exemption for the second floor and mezzanine of the subject property for 100% of the 2002 assessment year and denying an exemption for the basement was based solely on the Department's conclusion that the basement was not in exempt use in 2002. 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 were unchallenged in the instant proceeding. Christ Community Church is Christian nondenominational. Tr. p. 44. The Church purchased the property on November 17, 2001. Accordingly, the only real issue is whether the basement of the subject property was actually and exclusively used for exempt purposes in 2002.

3,600 square foot area (40%) of the basement: "2me Reprographics" rented this area from the Church on a month-to-month tenancy at \$800/month through September, 2002. The last month that "2me" paid rent to the Church was September, 2002, and "2me" had fully vacated the premises by October 1, 2002. Tr. pp. 10-11, 40-41. The Church did not argue at the evidentiary hearing that this area of the basement should be exempt prior to October 1, 2002. 35 ILCS 200/15-40 exempts property used for religious purposes "not leased or otherwise used with a view to profit." Property of a religious organization leased or used for profit is not exempt. People ex rel. Baldwin v. Jessamine Withers Home, 312 Ill. 136 (1924). An exemption for this area of the basement is warranted only if the Church's actual use of it after October 1, 2002, constituted religious use or development and adaptation for religious use.

Beginning in October, 2002, after “2me” vacated the basement, the Church began removing the stairway to the basement that “2me’s” customers had used and closing up the floor. It took the Church one day to remove the stairs and one week to close up the floor. Tr. pp. 21-22, 30. There was no testimony at the evidentiary hearing that any other work was done in the 3,600 square foot area of the basement after October 1, 2002. Removing the stairs and closing up the floor is evidence of an intention to convert the area to an exempt use. However, this activity by itself is not sufficient for me to conclude that the Church was in the actual process of developing and adapting the 3,600 square foot area for exempt use after October 1, 2002. Accordingly, this area should not be exempt from property taxes for the 2002 tax year.

5,200 square foot area (60%) of the basement: The heating and air conditioning systems were located in this part of the basement. These systems were in disrepair and were removed in 2002. Tr. pp. 21, 35. In mid to late 2002, the Church began adapting the building for an elevator to serve all floors. This was in keeping with the Church tenet that the entire building must be accessible to all people. Tr. pp. 15-16. An engineering study of the existing elevator shaft was completed. The space for the shaft had to be enlarged and some floor space on the mezzanine and second floor had to be removed. Some of the ceiling of the basement had to be removed to make room for the enlarged shaft and the floor of the basement had to be deepened for the elevator. This work was done by Church volunteers. This work was done in mid to late 2002 but the elevator was not installed until October, 2003. Tr. pp. 29, 31-32, 34; App. Ex No. 1. This preparation work, including the removal of the heating and air conditioning systems and the enlargement of the elevator shaft and deepening of the basement floor, shows that the

Church was in the actual process of development and adaptation of this area of the basement for exempt use in 2002. However, the actual space involved in this preparation work is relatively small in relation to the 5,200 square feet at issue. It is necessary, therefore, to look at other uses of the 5,200 square feet during the 2002 tax year.

The evidence presented at the hearing shows that in order to facilitate the renovation of the mezzanine and second floor of the building on the subject property, used for Church services and meetings, the Church used the 5,200 square foot area of the basement for storage of building materials. Tools, a table saw, conduit, suspended ceiling tiles, paint, scaffolding and other building materials were stored there. The janitor used the basement to store cleaning supplies. Sunday school supplies, tables and props for children's ministry were also stored in the basement. Tr. pp. 21, 29, 35, 38, 42. Pictures submitted by the Church at the evidentiary hearing show the storage of these items in the basement. App. Ex. No. 1.

The question of whether storage areas are exempt must be based on the standard set forth in MacMurray College v. Wright, 38 Ill. 2d 272, 278 (1967) where the court stated that "exemption will be sustained if it is established that the property is primarily used for purposes which are reasonably necessary for the accomplishment and fulfillment of the [religious] objectives, or efficient administration of the particular institution." In 2002, the Church was renovating the mezzanine and second floor of the building so that religious services and meetings could be held there. I have concluded that storage of the building and cleaning materials in the 5,200 square foot area of the basement was necessary for adaptation and development of the mezzanine and second floor for exempt use as a place for religious worship and meetings. Additionally, storage of the Sunday

school supplies, and tables and props for children's ministry in the basement provided for efficient administration of the Church. I have concluded that the storage in the basement described herein, the preparation work for the elevator shaft, and the removal of the heating and air conditioning system show that the Church had gone beyond a mere intention to develop the property and was in the actual process of development and adaptation for exempt use. The storage, preparation work and removal of the heating and air conditioning are sufficient to warrant an exemption of 5,200 square feet of the basement for the 2002 tax year.

WHEREFORE, for the reasons stated above, I recommend that 5,200 square feet (60%) of the basement be exempt from real estate taxes for the 2002 tax year during which time this area of the basement was in the process of development and adaptation for religious use.

May 24, 2004

Kenneth J. Galvin
Administrative Law Judge