

PT 04-20

Tax Type: Property Tax

Issue: Religious Ownership/Use

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

**NORTH SUBURBAN
LUBAVITCH CHABAD,
APPLICANT**

v.

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

No. 03-PT-0036

Real Estate Tax Exemption

**For 2002 Tax Year
P.I.N. 16-23-317-015**

Lake County Parcel

**Kenneth J. Galvin
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCE: Mr. Michael A. Blumenthal on behalf of North Suburban Lubavitch Chabad; Mr. Shepard Smith, 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 Lake County Parcel Index Number 16-23-317-015 (hereinafter the “subject 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.¹

¹ The subject property was owned by a private party prior to May 17, 2002, so any exemption concerns in the instant case are limited to that part of the 2002 assessment year that transpired between May 17, 2002 and December 31, 2002.

The controversy arises as follows. On August 20, 2002, North Suburban Lubavitch Chabad (hereinafter “applicant”) filed an Application for Property Tax Exemption for tax year 2002 with the Lake County Board of Review (hereinafter the “Board”). On November 14, 2002, the Board recommended to the Illinois Department of Revenue (hereinafter the “Department”) that the subject property be given a partial year exemption beginning November 1, 2002. Dept. Ex. No. 2. On April 24, 2003, the Department rejected the Board’s recommendation finding that the subject property was not in exempt use in tax year 2002. Dept. Ex. No. 1. On April 29, 2003, the applicant filed a timely request for a hearing as to the denial of the exemption.

On March 24, 2004, the applicant presented evidence at a formal hearing with Mr. Martin Skolnik, president of the synagogue, presenting oral testimony. Following submission of all evidence and a careful review of the record, it is recommended that the subject property be exempt from real estate taxes for 3% of the 2002 tax year.

FINDINGS OF FACT:

1. Dept. Ex. Nos. 1 and 2 establish 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 2002. Tr. pp. 7-8; Dept. Ex. Nos. 1 and 2.
2. Approximately eight years ago, the applicant built a synagogue on land contiguous to the subject property. Shortly after building the synagogue, the applicant began asking owners of nearby lots, including the owners of the subject property, to sell their property to the synagogue. In April and May of 2002, the applicant reached an agreement with the owner of the subject property and the applicant purchased the

property on May 17, 2002. The subject property had a house and a garage on it and the house was empty at the time of purchase. Tr. pp. 10-13; App. Ex. No. 1.

3. The applicant planned to extend the synagogue into the existing parking lot, demolish the house and garage on the subject property and use the subject property as a new parking lot for the synagogue. The applicant requested a demolition permit in 2002. The house and garage were demolished in 2003. Tr. pp. 13-14, 16, 21.
4. After purchasing the property, the applicant had to appear before a committee in Highland Park to see if the building on the subject property was a historical building. A sign was put up on the subject property advising that if anyone had any comments with regard to the demolition of the building, to contact the City of Highland Park. Tr. pp. 14, 21-22.
5. The applicant needed a permit from Highland Park to disconnect the utilities. The applicant applied for a permit in 2002. In order to disconnect the plumbing, the contractor has to open up the city street. The applicant hired a contractor with a special license to disconnect the plumbing. A "Proposal" dated December 20, 2002, from Biagi Plumbing Corporation to "perform sanitary sewer and water service disconnections per City of Highland Park requirements for building demolition" was accepted by the applicant on January 3, 2003. Tr. pp. 14, 17, 22, 27-30; Dept. Ex. No. 3.
6. While waiting for permits to begin work, the applicant used the driveway of the subject property for parking to relieve overcrowding and used the house for storage. Tr. p. 15.

7. In June, 2002, the applicant met with the Mayor of Highland Park and aldermen. The applicant applied for a special use permit in January, 2003. It took fourteen months to receive this permit. Tr. pp. 17-18, 23.

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 the subject property for 3% of 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 April 24, 2003, denying an exemption for the 2002 tax year was based solely on the Department's conclusion that the subject property 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. The North Suburban Lubavitch Chabad is an orthodox Jewish religious organization. Tr. p. 4. The applicant purchased the property on May 17, 2002. Accordingly, the only real issue is whether the subject property was actually and exclusively used for exempt purposes after May 17, 2002.

The evidence presented at the hearing shows that several activities occurred after the purchase of the subject property on May 17, 2002. The applicant had to appear before a committee in Highland Park to determine if the building on the subject property was a historical building. Tr. p. 14. According to Mr. Skolnik, the building on the subject property was an old building. "... [A] sign was put up on the property as a matter of fact stating if anyone had any comments in regard to the demolition of this property, please contact the City of Highland Park." Tr. pp. 21-22. In June, 2002, the applicant met with the mayor of Highland Park and aldermen "in order to have some consensus with the City" before applying for a special use permit. The applicant applied for this permit in January, 2003. Tr. p. 18.

The applicant planned to extend its synagogue out into its existing parking lot, demolish the house and garage on the subject property, and use the subject property as a new parking lot for the synagogue. Tr. pp. 13-14. The applicant requested a demolition permit in 2002. Tr. p. 17. The building on the subject property could not be demolished

until the plumbing was disconnected. The applicant needed a permit from Highland Park to disconnect the utilities. According to Mr. Skolnik, a plumbing contractor had to open up the city street and cut the plumbing off there. Tr. p. 27. “Normally the biggest problem would probably be disconnection of the plumbing because they only allow certain people to do it in Highland Park...” Tr. p. 14. “They only allow a few contractors to do it with special licenses.” Tr. p. 22. The applicant received a proposal on December 20, 2002, from Biagi Plumbing Corporation to “perform sanitary sewer and water service disconnections per City of Highland Park requirements for building demolition.” This proposal was accepted by the applicant on January 3, 2003. Dept. Ex. No. 3. The house and garage on the subject property were demolished in 2003. Tr. p. 16.

Mr. Skolnick testified that while waiting for permits to begin work, the applicant used the driveway of the subject property for parking to relieve overcrowding and used the house for storage. Tr. p. 15. There was no specific testimony as to what was stored on the property, the length of time it was stored, and what part of the house was used for storage in the 2002 tax year. The question of whether storage areas are exempt from taxation 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 the efficient administration of the particular institution.” Without more complete information as to the applicant’s use of the house on the subject property for storage, I am unable to conclude that the applicant met the standard required by MacMurray.

With regard to the use of the subject property for parking, Mr. Skolnick testified that “there is a driveway [on the subject property] and that driveway into the parking areas is adjacent to our parking lot so that we were able to park several cars in that lot to relieve the issues.” Tr. p. 15. There was no testimony as to when the parking began, how often cars were parked, how many cars were parked or the square footage of the driveway in relation to the square footage of the entire subject property. Without more complete information, I am unable to conclude that applicant’s use of the driveway on the subject property for parking would entitle it to an exemption for the driveway under 35 ILCS 200/15-125 of the Property Tax Code, entitled “Parking Areas.”

I have concluded that actual development and adaptation of the subject property for exempt use began on December 20, 2002, when the applicant received the proposal from Biagi Plumbing Corporation to disconnect the sewer and water connections in accordance with City of Highland Park requirements. The building on the subject property could not be demolished and other development work could not be completed without the disconnection of the utilities. Securing the services of Biagi Plumbing Corporation and applying for the demolition permit demonstrate that the applicant’s plans had gone beyond a mere intention to convert the subject property and actually constituted development and adaptation of the subject property for exempt use.

WHEREFORE, for the reasons stated above, I recommend that the subject property, identified by Lake County P.I.N. No. 16-23-317-015 be exempt from real estate taxes beginning December 20, 2002, representing 3% of the 2002 tax year, during which

time the subject property was in the process of development and adaptation for religious use.

Date: June 9, 2004

Kenneth J. Galvin
Administrative Law Judge