

**PT 04-27**  
**Tax Type: Property Tax**  
**Issue: Religious Ownership/Use**

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

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**ASSOCIATION OF INDEPENDENT  
BAPTIST CHURCHES OF ILLINOIS**

**Applicant**

**v.**

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

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**A.H. Docket # 03-PT-0018**  
**Docket # 02-27-0004**

**Parcel Index # 11-14-08-452-003**

**RECOMMENDATION FOR DISPOSITION**

**Appearances:** Mrs. Ellen M. Lee of Eckhardt & Lee Law Office for Association of Independent Baptist Churches of Illinois; Mr. Kent R. Steinkamp, Special Assistant Attorney General, for the Illinois Department of Revenue.

**Synopsis:**

The hearing in this matter was held to determine whether Ford County Parcel Index No. 11-14-08-452-003 qualified for exemption during the 2002 assessment year.

Pastor Tom K. Trumbull, State Missions Director (hereinafter referred to as the "Missions Director" or "Pastor") for the Association of Independent Baptist Churches of Illinois (hereinafter referred to as "AIBCI") was present and testified on behalf of the AIBCI.

The issue in this matter is whether the parcel was used by AIBCI for religious purposes during the 2002 assessment year. After a thorough review of the facts and law presented, it is my recommendation that the requested exemption be denied. In support thereof, I make the

following findings and conclusions in accordance with the requirements of Section 100/10-50 of the Administrative Procedure Act (5 ILCS 100/10-50).

**FINDINGS OF FACT:**

1. The jurisdiction and position of the Department that Ford County Parcel Index No. 11-14-08-452-003 did not qualify for a property tax exemption for the 2002 assessment year were established by the admission into evidence of Dept. Ex. No. 1. (Tr. p. 7)

2. The Department received the request for exemption of the subject parcels from the Ford County Board of Review. The board recommended granting the exemption. The Department denied the requested exemption finding that the property was not in exempt use. (Dept. Ex. No. 1)

3. AIBCI acquired the subject parcel by a Trustee's Deed dated April 26, 1995. The property consists of a 2.2-acre parcel with a 1680 square foot, 1 and ½ story residence on it. (Dept. Ex. No. 1)

4. Attached to the application submitted to the Department by AIBCI is a Parsonage Questionnaire. In response to the question, "Does the minister have any ownership interest in the parsonage?" AIBCI answered, "yes." (Dept. Ex. No. 1)

5. The 1680 square foot, 1 and ½ story residence was built with an \$80,000 no-interest loan to the Missions Director by AIBCI. The Missions Director chose the contractor and the basic design for the house. AIBCI had to approve the final plans. (Applicant's Ex. No. 1; Tr. pp. 20-21)

6. On July 1, 1998 the Missions Director signed an Agreement with AIBCI in which the \$80,000 loan would be forgiven over a 20-year period. (Applicant's Ex. No. 1)

7. The Agreement at ¶¶ 1, 2, 3, and 4 states:

1. AIBCI, in consideration of Pastor's employ at [sic] Mission Director of AIBCI, is desirous of facilitating the eventual ownership by Pastor of land now owned by AIBCI, to wit:

\* \* \*

(legal description)

2. AIBCI agrees to loan Pastor the sum of \$80,000.00, the purpose of which is to enable Pastor to build a residence on the land described above. Said loan shall bear no interest, and may be prepaid at an time.

3. Pastor shall be deemed to have repaid the sum of \$3000.00, per year for years one through five; \$3000.00 per year for years six through ten; \$4000.00 per year for years eleven through fifteen; and \$6000.00 per year for years sixteen through twenty. AIBCI shall provide Pastor with an Internal Revenue Service form 1099 reflecting each year's amount forgiven, which Pastor agrees will be deemed ordinary income to him.

4. AIBCI agrees to convey the above-described real estate to Pastor for the sum of One Hundred Dollars (\$100.00) upon Pastor's full repayment of the loan referenced in Paragraph Two (2). (Applicant's Ex. No. 1)

8. If the Missions Director leaves the employ of AIBCI before the loan is repaid, he can purchase the residence and property for \$100.00 plus any amount still due and owing on the loan referenced in paragraph 2 of the Agreement. (Applicant's Ex. No. 1)

9. A Severance Agreement was also signed by the Missions Director on July 1, 1998. If the Missions Director elects not to complete the purchase of the property, severance benefits would be due to him based upon the appreciated value of the property in question. The benefits are based upon: 1) the assessed fair-market value of the property at the time of severance; 2) less any mortgages, liens, encumbrances and related closing costs; 3) a subtraction of \$80,000 less "any amount forgiven, plus interest at a rate equal to the average annual rate of inflation in the actual fair market value of the parsonage from the date of purchase to the date of

evaluation under this agreement shall be subtracted as reimbursable expenses to the church”; and  
4) a subtraction of any and all expenses and related interest incurred by the church regarding the property. (Applicant’s Ex. No. 2)

10. AIBCI pays for all the utilities, taxes and other expenses of the property.  
(Applicant’s Ex. No. 3; Tr. pp. 18-19)

11. The parties stipulate that AIBCI is a religious organization. (Tr. pp. 30-31)

### **CONCLUSIONS OF LAW:**

Article IX, §6 of the Illinois Constitution of 1970 provides, in part, 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.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992)

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956). Whenever doubt arises, it is to be resolved against exemption and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944). Further, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967).

The religious property tax exemption found at 35 ILCS 200/15-40 states:

- (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.

The Missions Director has been employed by AIBCI for six years. He has been affiliated with AIBCI since 1979, first as a board member, then as a missionary church planter, and then became Director in 1998. (Tr. p. 9) The Department's argument is that the Missions Director has an ownership interest in the parsonage.

In Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill.App.3d 678 (4<sup>th</sup> Dist. 1994), the church owned the property. The church's minister, Reverend Gall, and his wife were purchasing the property from the church by a contract for deed for the same amount the church had paid. In the event the property was no longer used as a parsonage or if Gall ceased to be the church's pastor, the Galls could pay the balance due according to the terms of the contract and receive title to the property. The court found that:

In the instant case, the contract required the Galls to maintain insurance on the property and keep the property in good repair. They assumed responsibility for payment of real estate taxes assessed against the property for the date of the contract. They had the option to pay off the contract at any time and receive title to the property or relinquish the property to plaintiff and receive reimbursement of their equity and any improvements they had made. The contract clearly conferred incidents of ownership upon the Galls. We therefore hold that the Galls are owners of the property for real estate tax purposes and, for this reason, the property does not qualify under section 19.2<sup>1</sup> of the Act for a tax exemption. *Id.* at 682.

In this matter, the Missions Director was given an \$80,000 interest free loan to construct a residence on the subject property. The contractor was chosen by the Missions Director, and the house was built to his specifications. He repays the interest free \$80,000 loan by working for AIBCI for twenty years.

AIBCI asserts that “[I]n the case at hand, neither the Severance Agreement nor the Forgiveness Agreement have any provisions for Trumbull to automatically gain ownership of the property, nor can he accelerate performance on the agreements.” (Applicant’s Brief p. 3). In fact, paragraph 2 of the Agreement, states: “Said loan shall bear no interest, and may be prepaid at any time.” (emphasis added). Paragraph 4 of the same Agreement states that for an additional \$100.00, upon the full repayment of the loan, the entire property and residence will be conveyed to the Missions Director. Therefore, all that is required for pre-payment or fulfillment of the loan is the \$80,000 and an additional \$100. The Agreement further states that AIBCI is desirous of facilitating the eventual ownership of the land at issue and the building on it to the Missions Director.

The Missions Director characterizes the Agreement as an “incrementally driven gift; an incentive to take good care of the Director.” (Tr. p. 15) The Missions Director considers the

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<sup>1</sup> 35 ILCS 205/19.2 currently found at 35 ILCS 200/15-40.

Agreement to be “. . . an incentive. A lot of other organizations have maybe retirement things or incentives for keeping an employee. That was kind of the purpose behind this.” (Tr. p. 15) Plainly, however, there is a personal, financial benefit to the Pastor through his building of his own equity in the subject property.

Furthermore, there is nothing in evidence to show that it is a condition of the Missions Director’s employment or association to reside in the facility on the subject property. Neither the Agreement nor the Severance Agreement addresses this issue, which is a condition mandated by the statute in order for the pertinent exemption to apply. Property owned by a church and used as a parsonage or monastery was taxable prior to 1957. See People ex rel. Carson v. Muldoon, 306 Ill. 234 (1922), People ex rel. Pearsall v. Methodist Episcopal Church, 315 Ill. 233 (1925). However, the Illinois Supreme Court in McKenzie v. Johnson, 98 Ill. 87 (1983) held that the new provision granting an exemption for a parsonage used primarily for religious purposes was constitutional. The court also required that the parsonage must reasonably and substantially facilitate the aims of religious worship because the pastor’s religious duties require that he live in close proximity to the church or because the parsonage had unique facilities for religious worship and instruction or was primarily used for such purposes. The Applicant failed to present any evidence to show that it was a requirement for the Missions Director to live in the subject property, or that the property was used primarily for religious worship or instruction. I conclude, therefore, that the statutorily mandated conditions did not exist for this property during the tax year at issue.

In determining whether property is included within the scope of a tax exemption, all facts are to be construed and all debatable questions resolved in favor of taxation. Victory Christian Church v. Department of Revenue, 264 Ill.App.3d 919 (1994); City of Chicago v. Illinois

Department of Revenue, 147 Ill.2d 484 (1992). There is a presumption that no exemption is intended and the party claiming the exemption has the burden of showing that the property clearly falls within the statutory exemption. Village of Oak Park v. Rosewell, 115 Ill.App.3d 479 (1983).

The facts herein establish that Pastor Trumbull took control of the property before the construction of the house. He chose the floor plan and contracted with the builder. He was “loaned” \$80,000, with no interest, from AIBCI to construct the house. An agreement was reached in which the \$80,000 would be repaid in 20 years as part of his salary: \$30,000 for the first 10 years; \$20,000 for the next five; and \$30,000 for the remaining five years. He has to report those amounts as income to the IRS. At the end of the 20 years, he would owe \$100 for the residence and the 2.2 acres of land it sits on. If the pastor and AIBCI cease their association, the “Severance Agreement” entitles him to severance pay, the formula for which is spelled out in the Severance Agreement. The Agreement and Severance Agreement establish clearly that incidents of ownership have been transferred to the Missions Director.

For the foregoing reasons, it is recommended that the Department's denial of property tax exemption for Ford County Parcel Index No. 11-14-08-452-003 be upheld in its entirety and the property tax be assessed to AIBCI.

Respectfully Submitted,

Barbara S. Rowe  
Administrative Law Judge  
Date: September 14, 2004