

PT 04-30

Tax Type: Property Tax

Issue: Religious Ownership/Use

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

**LIVING WORD LUTHERAN CHURCH
OF ORLAND PARK,
APPLICANT**

v.

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

**No. 03-PT-0019
(01-16-3046)
P.I.N.S: 27-20-103-019**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Ms. Steven A. Salzman of Schmidt, Salzman & Moran on behalf of the Living Word Lutheran Church of Orland Park (the “applicant”); Mr. Marc Muchin, Special Assistant Attorney General, on behalf of the Illinois Department of Revenue (the “Department”).

SYNOPSIS: This proceeding raises the limited issue of whether real estate identified by Cook County Parcel Index Number 27-20-103-019 (the “subject property”) was used with a “view to a profit” in violation of 35 ILCS 200/15-40 during the 2001 assessment year. The underlying controversy arises as follows:

The applicant filed a Real Estate Tax Exemption Complaint with the Cook County Board of Review, which evaluated this matter and recommended to the Department that the subject property be exempt as of April 1, 2001. Dept. Ex. Nos. 2, 3. The Department then issued its initial determination in this matter, denying the requested exemption *in toto* on grounds of lack of exempt use, on December 19, 2002. Dept. Ex.

No. 1. The applicant filed a timely appeal to this determination and subsequently presented evidence at a hearing, at which the Department also appeared. Following submission of all evidence and a careful review of the record, I recommend that the Department's initial determination in this matter be affirmed.

FINDINGS OF FACT:

1. The Department's jurisdiction over this matter and its position therein are established by the admission into evidence of Dept. Ex. Nos. 1, 2 and 3.
2. The Department's position in this matter is that the subject property is not in exempt use. Dept. Ex. No. 1.
3. The subject property is located in Orland Park, IL and improved with a two-story residence. Dept. Ex. No. 2.
4. The applicant, an affiliate of the Missouri Synod of the Lutheran Church, obtained ownership of the subject property on January 22, 2001. Dept. Ex. No. 2; Applicant Ex. No. 1; Tr. p. 36.
5. The applicant purchased the subject property as a residence for its pastor, Steven A. Lang, who had been living in a rented home prior to the date of purchase. Tr. pp. 13, 47.
6. Pastor Lang claimed a \$14,033.00 deduction for mortgage interest payments on his personal federal income tax return for 2001. Dept. Ex. No. 4.
7. All of the deducted interest was paid on the mortgage that secured the applicant's purchase of the subject property. Tr. p. 43.

CONCLUSIONS OF LAW:

Article IX, Section 6 of the Illinois Constitution of 1970 states 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 mandate, the General Assembly enacted Section 15-40 of the Property Tax Code (35 **ILCS** 200/1-1, *et seq.*, 15-40), which provides for exemption of the following:

200/15-40. Religious purposes, orphanages, or school and religious purposes

All property used exclusively for religious purposes, or used exclusively for school and religious purposes, or for orphanages and not leased or otherwise used with a view to a profit, is exempt, including all such property owned by churches or religious institutions or denominations and 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 the vocation as ministers at such churches or religious institutions or for such religious denominations, and including the convents and monasteries where persons engaged in religious activities reside.

A parsonage, convent or monastery or other housing facility shall be considered under this Section to be exclusively used for religious purposes when the church, religious institution or denomination requires that the above-listed persons who perform religious related activities shall, as a condition of their employment or association, reside in the facility.

35 **ILCS** 200/15-40.¹

¹. An amendment to this provision, effective August 10, 2001, has no effect on the issue presented herein. *See*, Public Act 92-333.

Statutes conferring property tax exemptions are to be strictly construed, with all facts construed 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). Moreover, the applicant bears the burden of proving, by clear and convincing evidence,² that the property it is seeking to exempt falls within the appropriate statutory exemption. Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App.3d 678 (4th Dist. 1994).

In this case, the relevant statutory provision, 35 ILCS 200/15-40, specifically bars exemption where the property is used “with a view to profit.” The term “profit” has been defined, for property tax exemption purposes, as the income or other return that enables a property owner to derive personal financial benefit from owning real estate. Victory Christian Church v. Department of Revenue, 264 Ill. App.3d 919, 923 (1st Dist. 1988); 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); People ex rel. County Collector v. Hopedale Medical Foundation, 46 Ill. 2d 450 (1970); Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App.3d 678 (1994).

². 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 (3rd 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 (3rd Dist. 1996); In re Israel, 278 Ill. App.3d 24, 35 (2nd Dist. 1996); In re the Estate of Weaver, 75 Ill. App.2d 227, 229 (4th Dist. 1966).

Here, Pastor Lang received the type of personal financial gain that Section 15-40 prohibits by claiming, on his personal income tax return for 2001, a deduction of \$14,033.00 for interest payments made on the mortgage that secured the applicant's purchase of the subject property. Although Pastor Lang testified that the funds that enabled him to make these payments came from a housing allowance that he received from his employer, the applicant (Tr. pp. 22, 34-35), the applicant failed to submit any financial statements or other documents to substantiate Pastor Lang's testimony. Absent this documentation, Pastor Lang's testimony, standing alone, does not constitute the type of clear and convincing evidence that is necessary to sustain the applicant's burden of proof. However, even if the applicant had submitted appropriate supporting documentation, the ultimate decisive fact still remains that the mortgage interest deduction inured to Pastor Lang's personal benefit.

The Department's Determination in Docket Number 91-16-774, which found another property owned and used by this applicant to be tax exempt, does not alter this conclusion because it is well settled that "each individual claim for exemption must be determined from the facts presented." Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156 (1968). The facts presented herein prove that this particular subject property was used with a "view to a profit," in violation of Section 15-40 during the tax year currently in question, 2001. Therefore, the Department's initial determination in this matter should be affirmed.

WHEREFORE, for the reasons set forth above, I recommend that real estate identified by Cook County Parcel Index Number 27-20-103-019 not be exempt from 2001 real estate taxes under 35 **ILCS** 200/15-40.

Date: 9/8/2004

Alan I. Marcus
Administrative Law Judge