

PT 04-48
Tax Type: Property Tax
Issue: Religious Ownership/Use

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

IMMANUEL LUTHERAN CHURCH OF PEORIA
Applicant

v.

THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS

A.H. Docket # 03-PT-0052
Docket # 03-72-18
Parcel Index # 14-07-402-039

Barbara S. Rowe
Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

Appearances: 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 Peoria County Parcel Index No. 14-07-402-039 qualified for exemption during the 2003 assessment year.

Don Edie for the congregation of Immanuel Lutheran Church of Peoria, (hereinafter referred to as the "Applicant") was present and testified on behalf of applicant.

The issue in this matter is whether applicant used the parcel for exempt purposes during the 2003 assessment year. After a thorough review of the facts and law presented, it is my recommendation that the 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 Peoria County Parcel Index No. 14-07-402-039 did not qualify for a property tax exemption for the 2003 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 parcel from the Peoria 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. The applicant acquired the subject parcel by a warranty deed dated October 1, 2001. Located on the property is a one-story condominium unit used as living quarters for church workers. (Dept. Ex. No. 1)

4. The “Deaconess Description” submitted with the application details the job requirements of the person living in the condominium. It states that “Housing: The congregation will provide housing for the deaconess and is prepared to purchase a single family dwelling unit (i.e. condominium).” (Dept. Ex. No. 1)

5. Applicant was informed that it could be represented by an attorney if it wished. Applicant chose to proceed *pro se*. (Tr. p. 8)

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)

Pursuant to the authority granted by the Constitution, the legislature has enacted exemptions from property tax. At issue is the religious exemption found at 35 ILCS 200/15-40. In 2003, a portion of that statute stated:

(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.

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)

The Illinois Supreme Court in McKenzie v. Johnson, 98 Ill.2d 87 (1983) held that the 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 required 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.

Applicant admitted that there is nothing in the job description for the church worker that requires her to live in the condominium as a condition of her employment. (Tr. p. 14) Applicant also failed to establish that the church worker qualifies as a minister or church official as the statute mandates. The “Deaconess Description” submitted with the application lists tasks that the deaconess is expected to do, including assisting the pastor. None of these duties appear to take place on the property in question. In Du Page County Board of Review v. Department of Revenue and Good Shepherd Evangelical Lutheran Church, 339 Ill.App.3d 230 (2nd Dist. 2003) the Court found that a five-room house owned by a church and used by the “called” teacher as a residence did not qualify for a property tax exemption even though it was a condition of the teacher’s employment that she live in the house. The Court stated that the primary use of the property was as a residence and no school or religious functions took place on the property. *Id.* at 236. See also St. John Evangelical Lutheran Congregation v. Board of Appeals, 357 Ill. 69 (1934), People ex rel. Kelly v. Avery Coonley School, 12 Ill.2d 113 (1957)

For property tax exemption purposes, every applicant is different and each case must be decided on the facts raised in that case¹. A cause of action for taxes for one year is not the same as or identical with a cause of action for taxes for subsequent years, and the decision that property was taxable in certain years is not *res judicata* as to status of property during subsequent years. Each annual tax is a new cause of action and a property owner may be required to litigate the issue of its exempt status annually. Jackson Park Yacht Club v. Department of Local Government Affairs, 93 Ill.App.3d 542 (1st Dist. 1981), Application of

¹ Applicant’s major argument was that there are other parcels of real estate in Peoria that are used in a manner similar to Applicant’s use of the subject property and those properties are exempt from taxation. The Department objected to the admission into evidence of the other entities’ tax exemptions because the material was not relevant. The objection was sustained. (Tr. pp. 9-10) If, in fact, a mistake was made in an exemption application, there is no basis for perpetuation of that error. The argument that others similarly situated were granted an exemption was the only support Applicant put forth for entitlement to a property tax exemption.

County Collector of DuPage County, 157 Ill.App.3d 355 (2nd Dist. 1987); Hopedale Medical Foundation v. Tazewell County Collector, 59 Ill.App. 3d 816 (3rd Dist. 1978) *cert. denied* 440 U.S. 916 (1979); DuPage County Bd. of Review v. Joint Commission on Accreditation of Healthcare Organizations, 274 Ill.App.3d 461 (2nd Dist. 1995) *leave to appeal denied* 164 Ill. 2d 561; People ex rel. Tomlin v. Illinois State Bar Association, 89 Ill.App.3d 1005 (4th Dist. 1980). Therefore, the applicant herein must prove that the property at issue is exempt in the assessment year at issue.

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)

Applicant has failed to show that it is a condition of the employment of the deaconess that she live in the condominium on the property at issue. Applicant has also failed to prove that any religious activities took place on the subject property.

For the foregoing reasons it is recommended that Peoria County Parcel Index No. 14-07-402-039 remain on the tax rolls for the 2003 assessment year and be assessed to the Applicant, the owner thereof.

Respectfully Submitted,

Barbara S. Rowe
Administrative Law Judge
Date: November 29, 2004