

**PT 04-49**

**Tax Type: Property Tax**

**Issue: Religious Ownership/Use**

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

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**DURAND INTERNATIONAL CHURCH  
OF THE FOURSQUARE GOSPEL**

Applicant

v.

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

No. 04 PT 0029  
(03-101-52)  
PIN: 05-15-256-005

Mimi Brin  
Administrative Law Judge

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**RECOMMENDATION FOR DISPOSITION**

**Appearances:** Gary Stutland, Special Assistant Attorney General, on behalf of the Illinois Department of Revenue

**Synopsis:**

This matter comes on for hearing pursuant to the timely protest filed by the Durand International Foursquare Gospel Church (“Applicant” or “Durand”) pursuant to the denial by the Illinois Department of Revenue (“Department”) of its request for a non-homestead property tax exemption for the tax year 2003 for property identified as 05-15-256-005 (“subject property”). Applicant requested the exemption for property “used exclusively for religious purposes” as provided by 35 ILCS 200/40. The Winnebago County Board of Review recommended that the exemption be granted. The Department denied the exemption, stating that the subject property was not in exempt use during that

tax year. At the hearing, Reverend Mandee Smith, Administrative Assistant Minister, appeared and testified, by telephone, on behalf of the applicant.

Following the submission of all evidence and a review of the record, it is recommended that this matter be resolved in favor of the applicant.

**Findings of Fact:**

1. Applicant filed a religious application for a non-homestead property tax exemption for Winnebago County property identified by number 05-15-256-005, for the tax year 2003. Department Gr. Ex. #1
2. The Winnebago County Board of Review approved the exemption. Id.
3. The Department denied the exemption on the grounds that the subject property was not in exempt use during that tax year. Id.
4. Applicant has held title to the subject property since July 2000. Id.
5. The subject property is immediately adjacent to the property upon which the church is located. Applicant Ex. No. 1
6. The subject property forms a continuing green space from the church yard of the church, and is mowed and otherwise maintained by the church. Tr. p. 9
7. The subject property is used for all church activities for which the contiguous yard is used. Tr. pp. 8-11
8. When purchased, the church intended that the subject property be used “for the sole purpose of expanding church property for future development and addition [sic] church parking.” Department Gr. Ex. No. 1; Tr. p. 9

**Conclusions of Law:**

Article IX, Section 6 of the Illinois Constitution of 1970 provides 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 its constitutional authority, the General Assembly enacted section 15-40 of the Property Tax Code, 35 ILCS 200/1-1 *et seq.*, that provides, in relevant part, for the exemption of the following:

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

(a) Property used exclusively for:

(1) religious purposes,

xxx

qualifies for exemption as long as it is not used with a view to profit.

The Department's denial in this matter was based only on the issue of whether the subject property was in exempt use during the pertinent tax year.<sup>1</sup> For purposes of property tax exemptions, the word "exclusively" 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 (4<sup>th</sup> Dist. 1993). As applied to the uses of property, "religious purposes" refers to those uses by religious societies or persons as stated places for public worship, Sunday schools and religious instruction. People ex rel. McCullough v. Deutsche Evangelisch Lutherisch Jehova Gemeinde Ungeanderter Augsburgischer Confession, 249 Ill. 132, 136-7 (1911)

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<sup>1</sup> There is no issue as to whether the applicant qualifies as a religious entity.

It is well established in Illinois that the applicant herein has the burden to show that the subject property was actually used for exempt purposes. Illinois Institute of Technology v. Skinner, 49 Ill.2d 59 (1971). This same court held that:

‘[E]vidence that land was acquired for an exempt purpose does not eliminate the need for proof of actual use for that purpose. Intention to use is not the equivalent of use.’ (citation excluded)

Id. at 64

There is no question but that this applicant consistently advised the Department that it purchased this property intending to eventually use it as a parking lot for its church. Department Gr. Ex. 1; Tr. p. 9 As set forth in Illinois Institute of Technology v. Skinner, supra, intent to use property for an exempt purpose is not a sufficient basis for the grant of a property tax exemption. However, at the hearing, it was clear from the evidence presented that, in fact, during the tax year at issue, the applicant used the subject property in the identical manner and in conjunction with its adjacent church yard property, that was used for primarily religious purposes. Thus, applicant satisfied its evidentiary burden showing that the subject property was used primarily for religious purposes during tax year 2003.

**Wherefore**, for the reasons stated above, it is recommended that the property identified by Winnebago County property number 05-15-256-005 be exempt from real property taxes for the year 2003.

Date: 12/15/2004

Mimi Brin  
Administrative Law Judge