

PT 05-28

Tax Type: Property Tax

Issue: Religious Ownership/Use

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

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

v.

LAMARSH BAPTIST CHURCH

Applicant

)
)
)
)
)
)
)
)
)
)

Docket No. 05-PT-0005

Tax Year 2004

RECOMMENDATION FOR DISPOSITION

Appearances: Kent Steinkamp, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Pastor Brian Rahn, *pro se*, for LaMarsh Baptist Church.

Synopsis:

This case concerns whether certain property that is located in Peoria County and owned by LaMarsh Baptist Church (“applicant”) qualifies for a property tax exemption for the year 2004. The applicant acquired the property on September 28, 2004. The applicant alleges that the property qualifies for an exemption on the basis that it is used exclusively for religious purposes. A residence is located on the property, and the applicant alleges that its pastor is required to live in the residence as a condition of his employment. The Department of Revenue (“Department”) denied the exemption because it believed that the pastor was not required to live there. The applicant timely protested

the denial and an evidentiary hearing was held. Brian Rahn, who is the pastor of the applicant, testified on behalf of the applicant. After reviewing the record, it is recommended that the property be exempt for a portion of the 2004 assessment year.

FINDINGS OF FACT:

1. The applicant applied for a property tax exemption for property located at 8926 W. Maple Ridge Road in Mapleton, Illinois. The property has a residence that is used by the applicant's pastor. (Dept. Ex. #1)

2. The applicant acquired ownership of the property by means of a quitclaim deed dated September 28, 2004. (Dept. Ex. #1)

3. On the application for the property tax exemption, the applicant responded to a question by indicating that the minister or other official is not required to reside in the property as a condition of employment or association. (Dept. Ex. #1)

4. Pastor Rahn mistakenly believed that the question referred to the time that Pastor Rahn was hired. He began his employment with the applicant before the parsonage was acquired. Once the parsonage was acquired, the applicant required the pastor to live there as a condition of his employment. (Tr. pp. 7-8)

5. The trustees of the applicant and the pastor signed a statement verifying that the pastor is required to live in and maintain the parsonage as one of his duties of employment. (Dept. Ex. #2)

CONCLUSIONS OF LAW:

The applicant has requested an exemption from the property tax pursuant to section 15-40 of the Property Tax Code (35 ILCS 200/1-1 *et seq.*), which provides in part as follows:

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 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 * * *, their spouses, children and domestic workers, performing the duties of their vocation as ministers at such churches or religious institutions * * *.

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.

In determining whether property is exempt under this provision, the primary use of the property, rather than its incidental use, must be considered. Illinois Institute of Technology v. Skinner, 49 Ill.2d 59, 65-66 (1971); People ex rel. Pearsall v. Catholic Bishop of Chicago, 311 Ill. 11, 16 (1924). In order to qualify for the exemption, the property must actually be used for the exempting purpose. Illinois Institute of Technology at 64. Intention to use is not the same as actual use. Id.

It is well-established that property tax exemption provisions are strictly construed in favor of taxation. Chicago Patrolmen's Association v. Department of Revenue, 171 Ill.2d 263, 271 (1996). The party claiming the exemption has the burden of clearly proving that it is entitled to the exemption, and all doubts are resolved in favor of taxation. Id.; City of Chicago v. Department of Revenue, 147 Ill.2d 484, 491 (1992).

As the above-cited statutory provision indicates, parsonages will be exempt from property taxes if they are (1) "owned by churches or religious institutions or denominations;" (2) used as "housing facilities provided for ministers;" and (3) required to be the minister's residence as a "condition of employment." 35 ILCS 200/15-40. The Department denied the exemption because it believed that the pastor was not required to

live at the parsonage as a condition of employment. (Tr. p. 5) This is the only requirement of the statute that is at issue in this case.

The applicant's oral testimony and the documentary evidence submitted by the Department show that the pastor must live in the parsonage as a condition of his employment. The applicant is entitled to a partial exemption from September 28, 2004 to December 31, 2004.

Recommendation:

For the foregoing reasons, it is recommended that the property be exempt from taxation from September 28, 2004 to December 31, 2004.

Linda Olivero
Administrative Law Judge

Enter: June 15, 2005