

**PT 05-29**  
**Tax Type: Property Tax**  
**Issue: Religious Ownership/Use**

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

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**BIRDS FREE METHODIST CHURCH**  
**Applicant**  
**v.**

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

**Docket # 03-51-0006**  
**A.H. Docket # 04-PT-0044**  
**P.I. # 51-02-000-255-00**

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**RECOMMENDATION FOR DISPOSITION**

**Appearances:** Mr. Kent R. Steinkamp, Special Assistant Attorney General for the Department of Revenue of the State of Illinois.

**Synopsis:**

The hearing in this matter was held to determine whether Lawrence County Parcel Index No. 51-02-000-255-00 qualified for exemption during the 2003 assessment year.

Mr. Kyle Gray, Trustee, and Jack Andrews, Pastor of Birds Free Methodist Church, (hereinafter referred to as the "Applicant" or "Birds Free") were present and testified on behalf of Birds Free.

The issues in this matter include first, whether Applicant was the owner of the parcel during all or part of the 2003 assessment year, and secondly, whether the parcel was used by Applicant for exempt purposes or whether it was adapting the parcel for exempt use during 2003. After a thorough review of the facts and law presented, it is my recommendation that the requested exemption be denied for the 2003 assessment year. 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 Lawrence County Parcel Index No. 51-02-000-255-00 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. 8)

2. The Department received the request for exemption of the subject parcel from the Lawrence County Board of Review. The Board recommended granting a partial exemption from September 2, 2003 through December 31, 2003. The Department denied the requested exemption finding that the property was not in exempt use. (Dept. Ex. No. 1)

3. The Trustees of Free Methodist Church, Birds, Illinois, acquired the subject parcel by a Warranty Deed dated July 29, 2003. Located on the subject parcel is a 1484 square foot home and an 80 square foot “butbuilding.”<sup>1</sup> (Dept. Ex. No. 1)

4. On the application submitted by Birds Free, at Part 3 question 12, is the following:

If this property is used as a housing facility for a minister of a church or other similar official of a religious institution or religious denomination answer the following questions. . . .

**b** Is the minister or other official required to reside in the property as a condition of employment or association?  
Applicant responded “no”. (Dept Ex. No. 1)

5. Applicant also submitted the “Parsonage Questionnaire” sent to applicants by the Department. Question 3 asks “Is the minister required, as a condition of employment, to reside in the parsonage?” The Applicant responded, “No, but is encouraged by the Conference (Wabash Conference).” (Dept. Ex. No. 1)

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<sup>1</sup> Verbatim recitation from application submitted by Birds Free.

6. The subject parcel and buildings thereon are two miles Northwest of Applicant's church. (Dept. Ex. No. 1)

7. The house on the subject parcel required extensive remodeling. The minister did not move into the residence until January 7, 2004. Birds Free had another parsonage that was in a floodplain and was sold to help defray the expenses incurred with the purchase and renovation of the subject property. (Applicant's Ex. No. 10; Tr. pp. 15, 21, 27)

8. On August 17, 2004, the pastor of Applicant signed a document stating that he and his family are provided a parsonage for their housing. The parsonage is their home while they are at Birds Free and will be used as their home during the entire duration of their ministry. The members of the Official Board of Birds Free signified that they were in agreement with the statement by signing it on August 18, 2004. (Applicant's Ex. No. 1)

9. At a special board meeting held on August 18, 2004, the Local Board of Administration of Birds Free established the parsonage living requirements for pastors of Birds Free. Members of the Board contacted the Conference Office, Assistant Superintendent Bill Fox, who referred them to The Free Methodist Church of North America 2003 Book of Discipline. The Book of Discipline in Chapter VIII – Temporal Economy states:

If a pastor chooses not to occupy the parsonage, the local board of administration may rent it out to others and shall pay the pastor a housing allowance not less than the rent received, less any additional taxes or insurance required. (Dept. Ex. No. 1; Applicant's Ex. No. 7)

10. At the special board meeting held August 18, 2004, the Board moved and approved to set Pastoral Housing Requirements:

In accordance with the Free Methodist Church Book of Discipline, Birds Free Methodist Church hereby requires that any Pastor appointed to the church will be required to live in the provided Church Parsonage. This action is subject to the

guidelines found in the 2004 Book of Discipline, Page 171 under the section titled Temporal Economy. (Dept. Ex. No. 1; Applicant's Ex. No. 7)

11. The Applicant was informed that they were entitled to be represented by counsel. Birds Free chose to proceed without an attorney. (Tr. p. 10)

**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 enacted the religious exemption found at 35 ILCS 200/15-40. A portion of the statute 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 . . . 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 . . . 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. In doing so, 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.

The Trustees of Applicant purchased the property in 2003 and began remodeling the residence on it for their pastor. The pastor and his family did not move into the residence on the property until January 7, 2004. There is nothing in the record to explicitly establish that it is a condition of a pastor's employment with the Methodist Conference that he or she is required to live in a parsonage. In fact, there is a provision in the Book of Discipline to direct church actions if a pastor chooses not to occupy a parsonage. This is the only condition in effect for the subject parcel and residence in 2003, the taxable year at issue.

Birds Free did not have anything in writing that it was a condition of the employment of the pastor that he live in a parsonage until the special board meeting of the Local Board of Administration of Birds Free held on August 18, 2004. Applicant did not have a resolution to that effect prior to that meeting. (Tr. pp. 32-33)

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)

As Applicant has not established that in 2003 it was a condition of employment of the pastor that he live in the parsonage, as required by the statute, it is recommended that Lawrence County Parcel Index No. 51-02-00-255-00 remain on the property tax rolls for the 2003 assessment year.

Barbara S. Rowe  
Administrative Law Judge  
Date: June 27, 2005