

PT 05-30
Tax Type: Property Tax
Issue: Religious Ownership/Use

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

**PINE CONE TRUST d/b/a
SON RISE MINISTRIES**
Applicant
v.

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

A. H. DOCKET # 03-PT-0039
DOCKET # 02-25-05
PI # 11-07-036-006

Barbara S. Rowe
Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. Michael J. Meyer for Pine Cone Trust d/b/a Son Rise Ministries; Mr. George Logan, Special Assistant Attorney General, for the Illinois Department of Revenue.

Synopsis:

The hearing in this matter was held to determine whether Effingham County Parcel Index No. 11-07-036-006 qualified for exemption during the 2002 assessment year.

Mr. Ernest Carey, Trustee of the Pine Cone Trust, and Mr. Alan G. Hendricks, Pastor of Son Rise Ministries, were present and testified on behalf of Pine Cone Trust d/b/a Son Rise Ministries (hereinafter referred to as the "Applicant").

The issues in this matter include first, who was the owner of the parcel during the 2002 assessment year; secondly, whether the Applicant is an exempt organization; and lastly, whether the Applicant used the property for exempt purposes during the 2002 assessment year. After a thorough review of the facts and law presented, it is my recommendation that a portion of the

property qualifies for exemption in 2002 and a portion of the property remains on the tax rolls for the 2002 assessment year. In support thereof, I make the following findings of fact and conclusions of law 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 Effingham County Parcel Index No. 11-07-036-006 did not qualify for a property tax exemption for the 2002 assessment year were established by the admission into evidence of Dept. Ex. No. 1. (Tr. p. 9)

2. The Department received the request for exemption of the subject parcel from the Effingham County Board of Review. The Board recommended granting a full year exemption for 2002. The Department denied the requested exemption finding that the property was not in exempt ownership and not in exempt use. (Dept. Ex. No. 1)

3. Located on the subject parcel are a 2700 square foot church and a 1500 square foot residence. The parcel encompasses approximately 8.5 acres. (Department's Ex. No. 1)

4. The Department concedes that the church building and its adjacent grounds are used primarily for religious purposes and not with a view to profit and, therefore, qualify for exemption under §15-40(a) of the property tax code. That area is .85 acres. (Response Brief of the Department, p. 4; Joint Stipulation dated July 15, 2005)

5. The remainder of the acreage at issue, excluding the church, adjacent land, and residence, is wooded and not used. (Applicant's Ex. No. 6; Tr. p. 53)

6. Alan Hendricks and Louise Powers-Hendricks executed an "Assignment of Property" for the subject parcel to Pine Cone Trust on March 26, 1996. (Plaintiff's Ex. No. 3)

7. Chicago Title Insurance Company issued a Commitment for Title Insurance for the subject property on November 21, 2003, to Alan G. Hendricks, Louise B. Powers-Hendricks and Pine Cone Trust, as their interests may appear. (Dept. Ex. No. 1)

8. A judge in the Circuit Court for the Fourth Judicial Circuit, Effingham County, Effingham, Illinois entered an Order Quieting Title on June 7, 2004 for the subject property. The Order states that fee simple title is vested in Pine Cone Trust. The litigants were Pine Cone Trust by Dean Gerard Vossenkamper, Earnest Lee Carey, Jr. and Larry R. Fread, trustees, Plaintiff, versus Alan G. Hendricks, Defendant. (Plaintiff's Ex. No. 4)

9. The "Bylaws: Articles of Association (Incorporation)" of Son Rise Ministries state that:

The objects and purpose of the Association shall be to preach and teach the Gospel of Jesus Christ as set forth in the Old and New Testament Scriptures; to practice and promote the Christian Religion according to the Gospel of the New Testament Scriptures; to convert persons to the Christian Religion; to establish a Board of Directors in which shall be reposed the power to ordain qualified persons to the full work of the ministry; to ordain those persons to the ministry who have attained the age of 21 years, who have completed a high school education, or its equivalent, or who have already been ordained, and who have demonstrated to the satisfaction and approval of the Board of Directors that they are completely acquainted with the Gospel and Scriptures of Jesus Christ and are in every respect qualified for the ministry; to issue credentials to ordained ministers authorizing them to do and to perform all duties commonly connected with their offices as ministers; to issue church certificates to Association churches constituting said churches as organized places of worship; to acquire and to possess real and personal property to be used for the purpose of preaching, teaching and publishing the Gospel which includes churches, schools, colleges, to be used for religious purposes rather than impart general education, literature, or the arts and sciences, and publishing houses, to be used for the publication and sale of religious literature, rather than for the purpose of advancing and extending knowledge and learning among the people generally, and all equipment, buildings and land needed

to carry on the work of the Association; to operate and maintain cemeteries according to law, to authorize and send missionaries to any place in the world for the above purposes; to pursue the above foregoing objects and purposes in the State of Illinois, in all other states, in the District of Columbia, and in all foreign countries; and to do any and all the things necessary for and pertinent to the conduct of the Association under these Articles. (Plaintiff's Ex. No. 7)

10. The "Bylaws: Articles of Association (Incorporation)" of Son Rise Ministries are signed by Alan Hendricks as the Director. (Plaintiff's Ex. No. 7)

11. Alan B. Hendricks has a Doctorate in Theology. (Tr. p. 32)

12. The "Contract [sic] and Declaration of Trust Forming the Pine cone trust [sic]" (hereinafter the "Document") states that it is an "Unincorporated Pure Trust" established under the Common Law of Contract between the trustor and trustees and is an "Irrevocable Pure Trust." The body of the document states that it is a contract between the Trustor (Diane m. [sic] Brown) and three Original Trustees and is an irrevocable pure trust. Its "Declaration Of Purpose" states that the purpose shall be:

To promote acts of righteousness and good works so that men may glorify God and His Son who hath delivered us from the power of darkness according to the will of God.

To secure to my family and heirs forever due protection of person and property by liberty and fixed law, effectual [sic] putting the future felicity of my heirs beyond all danger, including but not limited to legal encroachment.

To acquire, own, use, give, convey and otherwise dispose of and deal in all kinds of property or any interest therein under nature's God, the laws of Missouri (not State of Missouri) and the united [sic] States of America, any law contrary to the Supreme Law of the Land notwithstanding. (Dept. Ex. No. 1)

13. The Document states that the trust shall continue for twenty-four (24) years and may be extended for twenty-four additional years. The Trustor conveys 12 pieces of 1 troy oz.

.999 pure silver to the trust as the initial corpus of the trust. The Trustees have the authority to determine what constitutes capital and profits and have authority to determine when and if distribution of capital and profits will be made to holders of Trust Certificates¹. Upon final liquidation of the trust property, the Trustees agree to distribute the equity to the existing holders of Trust Certificate Units in accordance with the percentage of beneficial equity. (Dept. Ex. No. 1)

14. Pine Cone Trust is not a religious organization, it is a trust, (Tr. p. 24) that operates for the purpose of maintaining rights and benefits to the Trustor's heirs. (Dept. Ex. No. 1)

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 2002, a portion of the statute stated:

- (a) Property used exclusively for:
 - (1) Religious purposes, or
 - (2) school and religious purposes, or
 - (3) orphanages

¹ No testimony or other documentation was submitted regarding the Trust Certificate Units. The Document empowers the trustees to issue a total of twelve thousand (12,000) beneficial units to be evidenced by Trust Certificate Units. (Dept. Ex. No. 1)

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 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.

The Department states in its response brief that “[A]fter reviewing the evidence presented at hearing, it is the Department’s position now that the Applicant has demonstrated that the church building and its adjacent grounds are used primarily for religious purposes and not with a view to profit and, therefore, qualify for exemption under section 15-40(a) of the Code. The Department hereby withdraws its denial of the exemption for this part of the property.” (Dept. Brief p. 4) Therefore, the only issue before me is whether the residence and the rest of the property qualify for exemption.

The second building on the property is the residence of the pastor. Applicant’s attorney in its brief, asserts that the words “exclusively used for religious purposes” in paragraph (b) of the above religious property tax exemption statute must refer to Subsection (a), since there is no requirement of exclusive use set forth in Subsection (b). Therefore, the issue of ownership is immaterial.” (Brief of Appellant p. 2) I do not agree. In Immanuel Evangelical Lutheran

Church of Springfield v. Department of Revenue, 267 Ill. App. 3d 678 (4th Dist. 1994) the appellate court found that a parsonage that was owned by a minister, who was purchasing the property by a contract for deed, did not qualify for a property tax exemption. The court stated “[A]lthough the tax exemption is ordinarily available to property used exclusively for religious purposes without regard to ownership, the statute does require ownership, as well as exclusive use, for property used for parsonages or other housing facilities provided for ministers and their families.” *Id.* at 681

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). However, 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. The legislature codified the holding in McKenzie v. Johnson, *supra*, at 35 ILCS 200/15-40(b), the religious exemption provision for parsonages.

One of the primary rules of statutory interpretation is that a specific statutory provision controls as against a general provision on the same subject. The People v. C. & T. R. R., 364 Ill. 329 (1936), Knolls Condominium Ass’n v. Harms, 202 Ill. 2d 450, 459 (2002). As subsection (b) of the religious property tax exemption addresses housing facilities for ministers, it is the appropriate sub-section to address an exemption for a parsonage.

Subsection (b) requires that a parsonage must be owned by a church, religious institution or religious denomination and used in conjunction therewith as housing facilities for ministers and their families in order to qualify for exemption. In its brief, the Department states: “As to the ownership requirement of section 15-40(b), the Department will stipulate that Applicant owns the property in question here. Plaintiff’s Exhibit Number 4.” It is unclear from the stipulation whether the Department stipulates that the Applicant owned the property during the taxable year at issue, or as of the date of the hearing. Assuming that the parties agree that Applicant owned the property during 2002, there is still the issue of whether Applicant is a religious organization.

The property is owned by Pine Cone Trust d/b/a Son Rise Ministries. The essential elements to the creation of a trust are a settlor and a trustee, subject matter or property, and beneficiaries with the nature and quantity of their interest specified along with the manner and time in which the trust is to be performed. Yardley v. Yardley, 137 Ill. App. 3d 747, 760 (2nd Dist. 1985). The trust at issue has a settlor², Diane M. Brown, and three trustees. The subject matter or property is the real estate at issue and the 12 pieces of 1 troy ounce .999 pure silver³. Twelve thousand (12,000) beneficial units, to be evidenced by Trust Certificate Units, are mentioned with no accompanying documentation or testimony. The time frame mentioned is 24 years with an extension of an additional 24 years. There are neither beneficiaries mentioned in the trust document nor the quantity of their interest. As there are no beneficiaries, an essential element of a trust is missing.

In addition, there is no evidence that the trust is a religious organization or institution. The trustees are individuals and not religious denominations. The trust, itself, does not have the

² “Trustor. One who creates a trust. Also called settlor.” Black’s Law Dictionary 1358 (5th ed. 1979)

³ No testimony or documentation was submitted regarding the silver.

characteristics of a church or religious organization. There is nothing in the record to establish that the trust is religious in nature. The witness for Applicant testified that Pine Cone Trust is nothing more than a trust.

Also at issue herein is the use of the parsonage and rest of the property. Regarding the parsonage, there is no evidence of an employment agreement between Hendricks and Son Rise Ministries. Nor is there evidence of a document requiring that he reside in the parsonage as a condition of his employment with Son Rise Ministries. (Tr. pp. 26, 47) The “Bylaws: Articles of Association (Incorporation)” of Son Rise Ministries is signed by Alan Hendricks as the Director. When questioned as to who would terminate the employment between Hendricks and Son Rise Ministries, should that happen, Hendricks was unable to respond definitively. He stated that there are “others; in different parts. Some are resident in the area, some are overseas.” (Tr. p. 51) There was no documentation offered as to who the persons or congregation might be who would have any religious authority over Hendricks and what congregation or persons could ratify a provision that Hendricks, as a condition of his employment with Son Rise Ministries, would reside in the parsonage. Such is necessary for a parsonage to qualify for a property tax exemption in the State of Illinois.

The rest of the property at issue is wooded and not used, according to the testimony of Pastor Alan Hendricks at the hearing and the photograph submitted. The religious property tax exemption requires that property be used for religious purposes to qualify for exemption.

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)

I find that the Department stipulated that the church and accompanying churchyard was used for religious purposes and not with a view to profit in 2002. Based upon the Department's concession in this matter, I recommend that the church and yard encompassing .85 acres of Effingham Parcel Index Number 11-07-036-006 qualifies for exemption for 2002. I also find that the Applicant has not established that the rest of the property was owned by a church or religious organization or used for religious purposes in 2002, in compliance with statutory mandates. The minister admitted that the remainder of the property was wooded and not used.

For the foregoing reasons, it is recommended that the 2700 square foot church and accompanying land, consisting of .85 total acres, on Effingham Parcel Index No. 11-07-036-006 be exempt from taxation for 2002. It is also recommended that the remainder of Parcel Index No. 11-07-036-006 not be exempt from property taxation in 2002, as Applicant has failed to prove that portion qualifies for exemption from taxation.

Barbara S. Rowe
Administrative Law Judge
July 25, 2005