

PT 05-40
Tax Type: Property Tax
Issue: Religious Ownership/Use

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

FIRST APOSTOLIC ASSEMBLY,

Applicant

v.

THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS

Docket No: 04-PT-0056

Real Estate Tax Exemption

For 2004 Tax Year
P.I.N. 17-06-303-043

Kankakee County Parcel

Kenneth J. Galvin
Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Mr. David Smith on behalf of the applicant; Ms. Brenda Gorski and Mr. Kenneth B. Nelson, Assistant State's Attorneys, on behalf of Kankakee County; Ms. Shiel Gupta, Special Assistant Attorney General, on behalf of the Department of Revenue of the State of Illinois.

SYNOPSIS:

This proceeding raises the issue of whether the subject property, identified by Kankakee County Parcel Index Number 17-06-303-043 (hereinafter the "subject property") qualifies for exemption from 2004 real estate taxes under 35 ILCS 200/15-40, which exempts, "[a]ll property used exclusively for religious purposes."

The controversy arises as follows: On June 9, 2004, First Apostolic Assembly (hereinafter "First Apostolic" or "applicant"), filed a Real Estate Exemption Complaint

for the subject property with the Board of Review of Kankakee County (hereinafter the “Board”). The Board reviewed the applicant’s complaint and subsequently recommended to the Illinois Department of Revenue (hereinafter the “Department”) that the exemption be denied. Dept. Ex. No. 1.

On July 22, 2004, the Department accepted the Board’s recommendation finding that the subject property was not in exempt ownership or use in 2004. Dept. Ex. No. 2. On September 14, 2004, the applicant filed a request for a hearing as to the denial and presented evidence at a formal evidentiary hearing on July 19, 2005, with Rev. James D. Young, Joyce Young, the Pastor’s wife and Secretary/Treasurer of the Church, Billie Joe Johnson, Church Trustee and son-in-law of the Pastor, and Eddie Young, the Pastor’s son, testifying. Following a careful review of the record in this case, it is recommended that the subject property be denied an exemption for the 2004 tax year.

FINDINGS OF FACT:

1. Dept. Ex. Nos. 1 and 2 establish the Department’s jurisdiction over this matter and its position that the subject property was not in exempt ownership and use in 2004. Tr. p. 9; Dept. Ex. Nos. 1 and 2.
2. First Apostolic Assembly of Kankakee, Illinois is exempt from sales tax in the State of Illinois as of May 14, 2004. The STAX, 305-R, “Request for Additional Information from Religious Organizations,” signed by “David [James] Young – Pastor” states that First Apostolic Assembly “maintain[s] a place of worship” at “Franklin (and) LaSalle, Bradley, Ill., 60914.” The subject property is not located at Franklin and LaSalle. Tr. pp. 16-17, 59-60; App. Ex. No. 2; Intervenor’s Ex. No. 4.

3. The subject property was purchased by James Young and Joyce Young on November 6, 2003 by warranty deed. Tr. pp. 28-31; Intervenor's Ex. No. 1.
4. The subject property is a residence with 2,772 square feet, 9 rooms and 5 bedrooms located at 1095 South 10th Ave. in Kankakee. Tr. pp. 57-58; Intervenor's Ex. No. 3.
5. The Rev. James D. Young and Joyce Young, "referred to as Landlord" leased the subject property to First Apostolic Assembly, "referred to as Tenant," in a "residential lease" commencing November 6, 2003 and terminating November 6, 2008 for a total rental of \$69,000, in monthly payments of \$1,150. The lease states that "[T]he premises shall be solely for residential purposes." The lease is signed by "Rev. James D. Young and Joyce Ann Young" as "landlord" and "by Billy J. Johnson," as "Treasurer" for First Apostolic Assembly. Tr. pp. 29-32; Intervenor's Ex. No. 2.
6. Rev. James Young, Joyce Young, their son Eddie Young, aged 29, and their daughter, Angela Toy, aged 43, reside in the subject property. Tr. pp. 33-35.
7. First Apostolic does not advertise, except for word-of-mouth advertising at Wal-Mart. First Apostolic has never been listed in the phone book in Kankakee County. Tr. pp. 32-33, 37.
8. Rev. James Young lays carpets for "Young's Flooring." The business is located in the residence and the telephone number for Young's Flooring is the same phone number as the residence. Rev. Young keeps tools, floor samples and carpeting samples in the residence, but also maintains supplies at an off-site location. Young's Flooring has been in business for 35 years. Eddie Young also sells flooring for Young's Flooring. Eddie is also a realtor. Tr. pp. 41-44, 46-47, 163, 166.

CONCLUSIONS OF LAW:

An examination of the record establishes that First Apostolic has not demonstrated, by the presentation of testimony, exhibits and argument, evidence sufficient to warrant exempting the subject property from property taxes for tax year 2004. In support thereof, I make the following conclusions.

Article IX, Section 6 of the Illinois Constitution of 1970 limits the General Assembly's power to exempt property from taxation 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.

The General Assembly may not broaden or enlarge the tax exemptions permitted by the constitution or grant exemptions other than those authorized by the constitution. Board of Certified Safety Professionals v. Johnson, 112 Ill. 2d 542 (1986). Furthermore, Article IX, Section 6 does not in and of itself, grant any exemptions. Rather, it merely authorizes the General Assembly to confer tax exemptions within the limits imposed by the constitution. Locust Grove Cemetery v. Rose, 16 Ill. 2d 132 (1959). Thus, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App. 3d 497 (1st Dist. 1983).

Pursuant to its Constitutional mandate, the General Assembly enacted the Property Tax Code, 35 ILCS 200/1-3 *et seq.* The provisions of that statute which govern the disposition of the instant proceeding are found in Section 200/15-40, which states as follows:

All property used exclusively for religious purposes, or used exclusively for schools 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 (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, and including the convents, and monasteries where persons engaged in religious activities reside.

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.

The above statute allows an exemption for property used exclusively for religious purposes. Benedictine Sisters of the Sacred Heart v. Department of Revenue, 155 Ill. App. 3d 325, 329 (2d Dist. 1987). Prior to 1909, the law required that religious property exemptions would be granted only if the party using the property for religious purposes also owned the property. People ex rel. Bracher v. Salvation Army, 305 Ill. 545 (1922). However, this is no longer the case because statutory changes have eliminated the ownership requirement for property used exclusively for religious purposes except for housing facilities provided for ministers. *Id.* Section 15-40 of the Property Tax Code now simply provides, “All property used exclusively for religious purposes, *** and not leased or otherwise used with a view to a profit, is exempt[.]” 35 ILCS 200/15-40 (1996). Accordingly, the first issue to be decided in the instant case is whether the applicant exclusively used the subject property for religious purposes in 2004. Property satisfies the exclusive-use requirement of the property tax exemption statutes if it is

primarily used for the exempted purpose, even though it may also be used for a secular or incidental purpose. McKenzie v. Johnson, 98 Ill. 2d 87, 98 (1983).

In the instant matter, the subject property is not exclusively used for religious purposes. The subject property is a residence with 2,772 square feet, 9 rooms and 5 bedrooms. Tr. pp. 57-58; Intervenor's Ex. No. 3. Rev. James Young, Joyce Young, his wife, Eddie Young, their son aged 29, and Angela Toy, their daughter aged 43, reside in the residence on the subject property. Tr. pp. 33-35.

The only room used for religious purposes is the den. Mr. Billie Joe Johnson, Church Trustee married to Rev. Young's daughter, Phyllis, was asked "what portion of the residence of 1095 South Tenth Street is used for church purposes?" He responded: "It would be a den off from the living room that we use. We clear it out and set up for church. We put it all back together, the furniture and everything, at the end of services." Tr. pp. 78, 138, 146. Joyce Young, the Pastor's wife, gave similar testimony: "We move [the furniture] all out, set up pews – not pews, but chairs, and we put [in] the pulpit and the organ/piano." Tr. p. 11.

The testimony was unclear and contradictory as to what religious services actually took place in the residence. Joyce Young testified that "through 2004, we had [services] Sunday, morning, Sunday night and Wednesday night" and that attendance ranged from 15 to 20 people. Tr. pp. 26, 33. She also testified that "[W]e do not have any small children and so we have not had Sunday school. We just have one service and they all stay in one service. We only have one child that has been coming." Tr. pp. 126-127. Rev. Young testified that 15 to 30 persons attend services and that five children attend

Sunday school. Tr. p. 100. Mr. Johnson testified that “[I]n 2004, we were just having morning service.” “Just on Sunday.” Tr. pp. 158-159.

First Apostolic Assembly is exempt from sales tax in the State of Illinois as of May 14, 2004. The STAX, 305-R, “Request for Additional Information from Religious Organizations,” signed by “David [James] Young – Pastor” states that First Apostolic Assembly “maintain[s] a place of worship” at “Franklin (and) LaSalle, Bradley, Ill., 60914.” The subject property is located at 1095 South 10th Avenue in Kankakee. Tr. pp. 16-17, 59-60; App. Ex. No. 2; Intervenor’ Ex. No. 4. No list of church members or attendees was offered into evidence. Mrs. Young testified that she keeps a log of church members but did not bring it to the evidentiary hearing. Tr. pp. 25-26. First Apostolic does not advertise, except for word-of-mouth advertising at Wal-Mart. First Apostolic has never been listed in the phone book in Kankakee County. Tr. pp. 32-33, 37. According to Joyce Young, the reason First Apostolic does not advertise is “because, you know, people don’t really like to go to homes to have church.” Tr. p. 37.

The residence on the subject property is also used for Rev. Young’s flooring business. Rev. Young lays carpets for “Young’s Flooring.” The business is located in the residence and the telephone number for Young’s Flooring is the same phone number as the residence. Rev. Young keeps tools, floor samples and carpeting samples in the residence, but also maintains supplies at an off-site location. Young’s Flooring has been in business for 35 years. Eddie Young, who resides in the residence, sells flooring for Young’s Flooring. Eddie is also a realtor. Tr. pp. 41-44, 46-47, 163, 166.

If there is religious use of this property, the use is clearly incidental to the main use of the property, which is as a residence. In fact, the “Residential Lease” for the

subject property from Rev. Young and Joyce Young, “Landlords,” to First Apostolic Assembly, “Tenant,” states that “[T]he premises shall solely be used for residential purposes.” It was never explained at the evidentiary hearing how the “landlords” could rent property to the tenant/church with the restriction that the premises “solely” be used for residential purposes. The lease requires First Apostolic Assembly to pay Rev. Young and Joyce Young a total of \$69,000 in monthly payments of \$1,150 over the term of the lease commencing on November 6, 2003 and terminating on November 6, 2008. Intervenor’s Ex. No. 2. The mortgage on the property is equal to the total amount of the lease. Tr. p. 120. The lease is signed by Rev. James Young and Joyce Young as “landlord.” “Billy J. Johnson, Treasurer,” signed the lease for the First Apostolic Assembly. Rev. Young thought that the lease was valid throughout 2004, but was not sure. Tr. pp. 85-86. Mr. Johnson testified that to his knowledge, the lease was still in effect. Tr. p. 149. Based on the testimony at the evidentiary hearing and the “Residential Lease” which requires that the premises be used “solely” for residential purposes, I must conclude that the subject property was not being used for exclusively religious purposes in tax year 2004.

Unlike the exemption for property used exclusively for religious purposes, housing facilities are exempt from property taxes if: (1) they are “owned by churches or religious institutions or denominations”; and (2) they are used as “housing facilities provided for ministers”; and (3) such ministers reside in the facility “as a condition of employment.” 35 ILCS 200/15-40. The residence on the subject property serves as a housing facility for Rev. James Young, Joyce Young, their son Eddie Young, aged 29, and their daughter, Angela Toy, aged 43. Tr. pp. 33-35. The pivotal question to be

determined in the instant case is whether the subject property is owned by First Apostolic Assembly and whether Rev. Young resides in the residence as a condition of his employment.

I am unable to conclude that First Apostolic Assembly is the owner of the subject property. The subject property was purchased by James Young and Joyce Young on November 6, 2003 by warranty deed. Tr. pp. 28-31; Intervenor's Ex. No. 1. The Department offered into evidence a "Quit Claim Deed" dated December 1, 2003 in which grantors, James Young and Joyce Young, quit claim their interest to grantee, First Apostolic Assembly. There is no property index number or property description on the quitclaim deed. There is no evidence that the deed was recorded. Rev. Young did not know if the deed was recorded and testified that "[W]e let another man handle it." Tr. p. 84. The deed is signed by a notary but does not contain a notary seal. Dept. Ex. No. 3. The quitclaim deed was not submitted as part of First Apostolic Assembly's original application for a property tax exemption received by the Board on June 9, 2004. Tr. p. 90; Dept. Ex. No. 1.

A conveyance of real property does not occur merely through the execution of a deed. A grantor must also deliver the deed and the grantee must accept it. In re Estate of Wittmond, 314 Ill. App. 3d 720 (4th Dist. 2000). No evidence was presented that either of the grantors, Rev. Young or Joyce Young, ever delivered the quitclaim deed to First Apostolic Assembly or that First Apostolic Assembly ever accepted the deed. No minutes or resolutions showing acceptance of the quitclaim deed by First Apostolic Assembly were offered into evidence. It was never explained at the evidentiary hearing why Rev. Young and Joyce Young would quitclaim the residence to the applicant when

they had already leased it to the applicant “solely” for residential purposes, as discussed above. According to Joyce Young, the lease was still valid “but we quick claimed it to the church.” Tr. p. 120. Rev. Young testified that there was a written agreement between him and the church under which the church was making mortgage payments to him but he did not have a copy of it. Tr. p. 105. Based on the testimony and evidence admitted at the hearing, I am unable to conclude that First Apostolic Assembly owns the subject property as is required for exemption of housing facilities under 35 ILCS 200/15-40. There is no provision for exemption in the statute for housing facilities owned by the residents, leased to the church, and then in effect leased back to the residents “solely” for residential purposes.

At the evidentiary hearing on the subject property, First Apostolic Assembly did not introduce any documentary evidence, such as contracts, board resolutions or minutes showing that Rev. Young was required to live on the subject property as a condition of his employment. First Apostolic Assembly’s Trustees include Eddie Young, the Pastor’s son, David Young Jr., the Pastor’s son, Joyce Young, the Pastor’s wife, and Billy Joe Johnson, married to the Pastor’s daughter, Phyllis. Tr. pp. 135-136. The Pastor himself is a Trustee for purposes of casting the deciding vote when there’s “a voting situation and it’s all tied up.” Tr. pp. 152-153. Two of the four Trustees, or three of the five Trustees if you include the Pastor, live on the subject property

It must be noted that courts generally presume that a board of trustees will act in good faith and in furtherance of the company’s best interests when making decisions. Spillyards, et al. v. Abbud, et al., 278 Ill. App. 3d 663, 681-682 (1st Dist. 1996). Courts usually will not interfere with a governing board’s judgment absent a showing that the

Board acted in bad faith, abused its discretion or committed gross negligence. *Id.* First Apostolic Assembly's Board, composed only of family members with the Pastor having the deciding vote, does not appear to be free to issue managerial directives that reflect good faith efforts to advance the church's best interests. Accordingly, even if evidence had been presented showing that the Trustees had required Rev. Young to live in the residence as a condition of his employment or showing that the Trustees had accepted a quitclaim deed from the Pastor and his wife to the church, I would consider such evidence unconvincing and not entitled to credibility in this forum.

WHEREFORE, for the reasons stated above, it is my recommendation that real estate, identified by Kankakee County P.I.N. 17-06-303-043 shall not be exempt from 2004 real estate taxes.

Kenneth J. Galvin
Administrative Law Judge

October 6, 2005