

**PT 06-28**

**Tax Type: Property Tax**

**Issue: Religious Ownership/Use**

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

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**THOMPSONVILLE CHURCH OF GOD**  
**Applicant**

**v.**

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

**A.H. Docket # 05-PT-0016**

**Docket # 04-28-06**

**Parcel Index # 2-74-034-04**

**Barbara S. Rowe  
Administrative Law Judge**

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**RECOMMENDATION FOR DISPOSITION**

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

**Synopsis:**

The hearing in this matter was held to determine whether Franklin County Parcel Index No. 2-74-034-04 qualified for a religious property tax exemption during the 2004 assessment year.

Reverend Brian Mixon, pastor of the Thompsonville Church of God (hereinafter referred to as the "Church"), was present and testified on behalf of applicant.

The issues in this matter include, first, whether the Church was the owner of the parcel during the 2004 assessment year and second whether the parcel was used by the Church for religious purposes during the 2004 assessment year. After a thorough review of the facts and law presented, it is my recommendation that the requested exemption be denied. 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 Franklin County Parcel Index No.2-74-034-04 did not qualify for a property tax exemption for the 2004 assessment year were established by the admission into evidence of Dept. Ex. No. 1. (Tr. p. 7)

2. The Department received the request for exemption of the subject parcel from the Franklin County Board of Review. The board recommended granting the exemption. The Department denied the requested exemption finding that the property was not in exempt use. (Dept. Ex. No. 1)

3. The trustees of the Church acquired the subject parcel by a warranty deed dated September 15, 2004.<sup>1</sup> (Dept. Ex. No. 1)

4. Located on the 160 square foot by 165 square foot parcel is a 264 square foot building. (Dept. Ex. No. 1)

5. Pictures of the cement and sided building, dated September 21, 2004<sup>2</sup>, were included with the application. The pictures show a cement building with the word "T-VILLE" over the window to the left of the front door and "AUCTION" over the right window. (Dept. Ex. No. 1)

6. Other pictures included with the application are of the interior of the building. The pictures show piles of furniture, including chairs and a pool table, in the center of the one large vacant room. None of the pictures contain people involved in any activities. (Dept. Ex. No. 1)

7. In response to Part III question 9 of the application, which asks "Days and Hours of Services:" the response was "Flexible. Regular time will be Sun 10AM Sun 6 PM & Wed 7 PM." (Dept. Ex. No. 1)

8. The pastor of the Church was informed that it could be represented by counsel in

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<sup>1</sup> The Department stipulated for the purposes of the hearing and for purposes of the property tax exemption that the Church owned the real estate at issue for the entire 2004 assessment year. (Tr. pp. 5-6)

<sup>2</sup> The date is on the back of the pictures.

this matter. It chose to proceed without an attorney. (Tr. pp. 8-9)

### **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.

A portion of the statute states:

- (a) Property used exclusively for:
  - (1) Religious purposes, or
  - (2) school and religious purposes, or
  - (3) orphanagesqualifies for exemption as long as it is not used with a view to profit.

The pastor of the Church submitted an affidavit at the hearing that he had executed on January 4, 2006, stating that “This property has always been used by the Thompsonville Church of God solely for worship services, singing services and youth activities.” (Applicant’s Ex. No. 1) He also submitted pictures<sup>3</sup> dated November 7, 2005<sup>4</sup> of the exterior of the building, which showed the previously identified windows boarded over and painted white. Two other windows have crosses painted on them. Another picture, dated June 11, 2005, shows nine youth, eight of whom are seated, one with a guitar, and the ninth that is standing in front of a screen with a

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<sup>3</sup> Applicant’s Ex. No. 2

<sup>4</sup> The dates on the back are imprinted by Walgreens.

microphone. The pastor of the Church did not explain the picture. He is the only person who appeared at the hearing and testified.

Applicant's pictures dated 2004, the taxable year at issue, show no religious use of the property at issue. Rather, they show an auction house with furniture piled in the center of the one large room. Although the pastor of the Church asserts that the property has always been used for religious purposes, the pictures dated 2004 do not support that assertion. The Illinois Appellate Court found that a church owned building, which was not used for any purpose and was boarded up during the taxable years in question did not qualify for a property tax exemption for those years. Antioch Missionary Baptist Church v. Rosewell, 119 Ill. App. 3d 981 (1<sup>st</sup> Dist. 1983)

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 the Church has not met its burden of proving that the primary use of the subject property in 2004 was for religious purposes, it is recommended that Franklin County Parcel Index No. 2-74-034-04 remain on the tax rolls for 2004.

Barbara S. Rowe  
Administrative Law Judge  
Date: July 31, 2006