

PT 98-100
Tax Type: PROPERTY TAX
Issue: Religious Ownership/Use

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

CATHOLIC DIOCESE OF JOLIET)		
Applicant)		
)	Docket #	96-22-93
v.)		96-22-94
)		
)	Parcel Index #	04-13-211-001
THE DEPARTMENT OF REVENUE)		04-13-122-001
OF THE STATE OF ILLINOIS)		

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. Todd M. Cowden appeared on behalf of the Catholic Diocese of Joliet. Mr. Robert G. Rybica, assistant state's attorney of DuPage County appeared on behalf of the DuPage County Board of Review.

Synopsis:

The hearing in this matter was held on January 21, 1998, at the James R. Thompson Center, 100 West Randolph Street, Chicago, Illinois, to determine whether or not DuPage County Parcel Index Nos. 04-13-211-001 and 04-13-122-001 qualified for exemption from real estate taxation for the 1996 assessment year.

Mr. John Aylward, the volunteer business administrator of St. John the Baptist Roman Catholic Church was present and testified on behalf of St. John the Baptist Roman Catholic Church (hereinafter referred to as the "Church").

The issues in this matter include, first, whether the Roman Catholic Diocese of Joliet (hereinafter referred to as the “Diocese”) owned the parcels here in issue in trust for the use and benefit of the Church; secondly, whether the Church is a religious organization; and finally whether these parcels were used by the Church for religious purposes or were they leased or otherwise used for profit during the 1996 assessment year. Following the submission of all of the evidence and a review of the record, it is determined that the Diocese owned the parcels here in issue in trust for the use and benefit of the Church during the 1996 assessment year. It is also determined that the Church is a religious organization. Finally, it is determined that these parcels were leased and otherwise used for profit during the 1996 assessment year.

It is therefore recommended that DuPage County Parcel Index Nos. 04-13-211-001 and 04-13-122-001 be placed back on the tax rolls for the 1996 assessment year and be assessed to the Diocese, the owner thereof.

Findings of Fact:

1. The jurisdiction and position of the Illinois Department of Revenue (hereinafter referred to as the “Department”) in this matter, namely that these parcels did not qualify for exemption for the 1996 assessment year, was established by the admission in evidence of Department’s Exhibit Nos. 1 through 6A.

2. On May 28, 1996, the DuPage County Board of Review transmitted to the Department Applications for Property Tax Exemption To Board of Review concerning the parcels here in issue for the 1996 assessment year. (Dept. Ex. Nos. 2 & 2G)

3. On November 27, 1996, the Department advised the Diocese that it was denying the exemption of these parcels because these parcels were not in exempt use. (Dept. Ex. Nos. 3 & 3A)

4. By a letter dated December 12, 1996, the business administrator of the Church requested a formal hearing in this matter. (Dept. Ex. No. 4)

5. The hearing in this matter conducted on January 21, 1998, was held pursuant to that request.

6. On February 15, 1977, the parcels here in issue were conveyed to the Catholic Dioceses of Joliet in trust for the use and benefit of the Church. (Dept. Ex. No. 2K)

7. I take Administrative Notice of the decision in Docket No. 78-22-2 which was issued on October 24, 1978. In that decision, the two parcels here in issue, which were owned by the Diocese, were approved for exemption from real estate tax. I therefore find that it was determined during 1978 that the Diocese and the Church were religious organizations and that these parcels were being used by the parishioners of the church for parking, while they were attending religious activities at the church. (Dept. Ex. No. 2-0)

8. The two parcels here in issue were estimated to hold approximately 85 to 100 cars. During the 1995 assessment year, prior to December 1, 1995, these parking lots were used during the week by persons attending Church functions in the Church basement. On Saturday and Sunday, these lots were used by persons to park their cars who were on their way to attend Mass at the Church. (Tr. p. 12)

9. These parking lots are about a quarter of a block wide and approximately 600 feet in length. Approximately three-quarters of the lot is blacktopped and about one-quarter is in grass. (Tr. p. 16)

10. It was established that none of the photographs marked as applicant's exhibits were taken during the 1996 assessment year. (Tr. p. 23)

11. On December 1, 1995, the Church, as lessor, and The Commuter Rail Division of the Regional Transportation Authority (hereinafter referred to as "Metra") and the Village of Winfield (hereinafter referred to as the "Village"), as lessee, entered into a lease concerning the parcels here in issue. (Dept. Ex. No. 2L)

12. The term of the lease was two years, or from December 1, 1995, through November 30, 1997. The lease provided that these parcels shall be used for commuter parking by persons riding the Metra trains Monday through Friday from 5:00 A.M. to 6:00 P.M. (Dept. Ex. No. 2L)

13. Metra agreed in the lease to provide, install and maintain at its expense a fee box for the operation of the commuter parking lot, for the use and benefit of the parties to the lease. (Dept. Ex. No. 2L)

14. The Village agreed that it would collect all fees from the parking lot fee box on a monthly basis, provide an accounting, and turn over one-half of the gross proceeds to the Church. (Dept. Ex. No. 2L)

15. The Village also agreed that it would be responsible for all ordinary and customary maintenance, as well as snow removal as needed, including weekends and holidays. (Dept. Ex. No. 2L)

16. Metra agreed to seal coat, stripe, and number the parking spaces. (Dept. Ex. No. 2L)

17. Prior to December 12, 1996, the Church had received \$4,117.00 during 1996 pursuant to the lease. (Tr. p. 24, Dept. Ex. No.4)

18. Both parishioners and commuters could park wherever they wanted to on these parcels. (Tr. p. 33)

19. During 1996, on week days during the hours when these parcels were subject to the lease, a majority of the parking spaces which were occupied were occupied by persons using the lot for commuter parking. (Tr. pp. 25 & 26)

Conclusions of Law:

Article IX, Section 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.

35 ILCS 200/15-40 provides as follows:

All property used exclusively for religious purposes, or used exclusively for school and religious purposes, . . . and not leased or otherwise used with a view to profit, is exempt,

35 **ILCS** 200/15-125 exempts certain property from taxation as follows:

Parking areas, not leased or used for profit, when used as a part of a use for which an exemption is provided by this Code and owned by any school district, non-profit hospital, school, or religious or charitable institution which meets the qualifications for exemption, are exempt. (Emphasis supplied)

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a 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); Milward v. Paschen, 16 Ill.2d 302 (1959); and Cook County Collector v. National College of Education, 41 Ill.App.3d 633 (1st Dist. 1976). 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) and People ex rel. Lloyd v. University of Illinois, 357 Ill. 369 (1934). Finally, 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); Girl Scouts of DuPage County Council, Inc. v. Department of Revenue, 189 Ill.App.3d 858 (2nd Dist. 1989) and Board of Certified Safety Professionals v. Johnson, 112 Ill.2d 542 (1986).

Pursuant to the provisions of the deed dated February 15, 1977, I conclude that the Diocese held these two parcels in trust for the use and benefit of the Church. I also conclude, based on the determination in Docket No. 78-22-2, that the Department has established that these parcels are owned by the Diocese and are held in trust for the use and benefit of the church, which is a religious organization.

From reading together 35 **ILCS** 200/15-40 and 35 **ILCS** 200/15-125 set forth above, it is clear that for a parking lot owned by a religious institution to qualify for exemption it must be owned by a religious institution and used for religious purposes. Consequently, the statement by

the attorney for the Church in his closing argument that the question of whether the property is exempt is determined by the primary use of the property is incorrect.

The lease of the parcels here in issue, which was in effect during the entire 1996 assessment year, concerned the leasing by the Church of these parcels to Metra and the Village as lessees, so that Metra and the Village could use these parcels for commuter parking by persons from the area wishing to ride Metra commuter trains.

35 ILCS 200/15-60 provides in part as follows:

Also exempt are:

(c) all property owned by any city or village located within its incorporated limits.

35 ILCS 200/15-100 provides as follows:

All property belonging to any municipal corporation created for the sole purpose of owning and operating a transportation system for public service is exempt.

The Metropolitan Transit Authority Act, pursuant to which Metra was created, provides at 35 ILCS 3605/33 in part as follows:

All property of the Authority is declared to be public property devoted to an essential public and governmental function and purpose and shall be exempt from all taxes and special assessments of the State, any subdivision thereof, or any unit of local government.

It is clear from the forgoing that both of the lessees under the lease here in issue, the Village and Metra, are exempt from real estate taxes as a result of their ownership of property. The Church leased these parcels to the Village and Metra. The Village and Metra only qualify for exemption from real estate taxes pursuant to statutory exemptions based on ownership.

Illinois Courts have consistently stated the general principle that the use of property to produce income is not a charitable or an exempt use. People ex rel. Baldwin v. Jessamine Withers Home, 312 Ill. 136 (1924). *See also* The Salvation Army v. Department of Revenue, 170 Ill.App.3d 336 (2nd Dist. 1988), leave to appeal denied. It should also be noted that the

Church's rental of these parcels to the Village and Metra resulted in a cash profit to the Church of \$4,117.00 for the 1996 assessment year. In addition, the Church gained the value of any sealing of the lot and striping performed by Metra and any snow removal performed by the Village.

In the case of The Village of Oak Park v. Rosewell, 115 Ill.App.3d 497 (1st Dist. 1983), the Appellate Court considered a case where the First Presbyterian Church of Oak Park owned two adjoining parcels of land which it used as a parking lot on Sundays from 9 A.M. to 10 P.M. and which it leased during the rest of the week to the Village of Oak Park, for profit. In that case, the village relied on the decision in Children's Development Center, Inc. v. Olson, 52 Ill.2d 332 (1972). The village contended that the church parking lot should be exempt since it was leased by a religious organization which was an exempt entity to the village, which was also exempt.

In rejecting that argument, the Appellate Court found that the Children's Development Center, Inc. case was distinguishable and stated as follows:

The section 19.7 (charitable) exemption, like that in section 19.2 for religious institutions, turns on the primary use of the property. Unlike those provisions, the exemption provided for municipalities turns solely on ownership of the property.

The Appellate Court then went on to hold that to broaden the municipality exemption to include property only used for municipal purposes and not owned by a municipality would add a new exemption to paragraph 19.6. Paragraph 19.6 was the section where the municipality exemption was found in the Revenue Act of 1939. The Court refused to broaden that exemption.

The cause before me concerns facts which are very similar to the Village of Oak Park case. In this case, the Church is seeking an exemption pursuant to the municipality exemption for the Village and also an exemption pursuant to 35 ILCS 200/15-100 which is the exemption for Metra. Both the Village exemption and the Metra exemption, like the municipality exemption found in paragraph 19.6 of the Revenue Act of 1939, require ownership. As in the Village of Oak Park case, the lessees in this case are not the owners of the property and therefore

do not qualify for exemption.

While the testimony indicated that although the Church had leased these parcels to the Village and Metra during the hours from 5:00 A.M. to 6:00 P.M. Monday through Friday during 1996, parishioners also parked on these parcels for religious purposes during 1996. Both parishioners and commuters were free to park anywhere they wanted to on the lot. It was admitted that during the hours from 5:00 A.M. to 6:00 P.M. Monday through Friday that the majority of the parking spaces which were occupied were occupied by persons using those spaces for commuter parking. Clearly then, the number of persons who parked on these parcels during 1996 who were commuters were more than merely incidental. Where as here, the property as a whole was used for both exempt and nonexempt purposes, it will qualify for exemption only if the exempt use is the primary use, and the nonexempt use is merely incidental. Illinois Institute of Technology v. Skinner, 49 Ill.2d 59 (1971) and also MacMurray College v. Wright, 38 Ill.2d 272 (1967). That is certainly not the case here. I therefore conclude that the parcels here in issue did not qualify for exemption during the 1996 assessment year.

I therefore recommend that DuPage County Parcel Index Nos. 04-13-211-001 and 04-13-122-001 be placed back on the tax rolls for the 1996 assessment year and be assessed to the Diocese, the owner thereof.

Respectfully Submitted,

George H. Nafziger
Administrative Law Judge
December 15, 1998