

PT 98-99
Tax Type: PROPERTY TAX
Issue: Religious Ownership/Use

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

APOSTOLIC ASSEMBLY
of the
LORD JESUS CHRIST,
APPLICANT

v.

STATE OF ILLINOIS
DEPARTMENT OF REVENUE

Docket No: 96-16-0276

Real Estate Exemption
for 1996 Tax Year

P.I.N: 25-17-301-021

Alan I. Marcus
Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Mr. Eric J. Tanquilut of the Law Offices of Aaron Spivak appeared on behalf of the Apostolic Assembly of the Lord Jesus Christ.

SYNOPSIS: The primary issue raised herein is whether real estate identified by Cook County Parcel Index Number 25-17-301-021 (hereinafter the "subject property") was "used exclusively for religious purposes," within the meaning of 35 ILCS 200/15-40,¹ during the 1996 assessment year. Also at issue are whether: (1) applicant qualifies as an "institution of public charity" within the meaning of 35 ILCS 200/15-65; and (2) the subject property was actually and

1. In People ex rel Bracher v. Salvation Army, 305 Ill. 545 (1922), the Illinois Supreme Court held that the issue of property tax exemption will depend on the statutory provisions in force at the time for which the exemption is claimed. This applicant seeks exemption from 1996 real estate taxes. Therefore, the applicable statutory provisions are those contained in the Property Tax Code, 35 ILCS 200/1-1 *et seq.*

exclusively used for charitable or beneficent purposes," as required by Section 15-65 of the Property Tax Code, during the 1996 assessment year.

The controversy arises as follows:

The Apostolic Assembly of the Lord Jesus Christ, (hereinafter the "Assembly" or the "applicant") filed a Real Estate Exemption Complaint with the Cook County Board of (Tax) Appeals (hereinafter the "Board") on September 12, 1996. Dept. Gr. Ex. No. 1, Doc. A. The Board reviewed applicant's complaint and recommended to the Illinois Department of Revenue (hereinafter the "Department") that the requested exemption be denied. Dept. Gr. Ex. No. 1, Doc. B.

The Department accepted this recommendation via a determination, dated May 15, 1997, finding that the subject property "is not in exempt use." Dept. Ex. No. 2. Applicant subsequently filed a timely request for hearing as to this denial (Dept. Ex. No. 3) and thereafter presented evidence at a formal administrative hearing. Following submission of all evidence and a careful review of the record, I recommend that the subject property not be exempt from 1996 real estate taxes.

FINDINGS OF FACT:

1. The Department's jurisdiction over this matter and its position therein, namely that the subject property was not in exempt use during the 1996 assessment year, are established by the admission into evidence of Dept. Ex. No. 2.
2. The subject property is located at 10740 S. Vincennes, Chicago, IL 60643 and improved with a 3,125 square foot building. Dept. Group Ex. No. 1, Documents A, B.

3. Applicant acquired ownership of this 2-story building, and the entire subject property, via a warranty deed dated May 10, 1989. Dept Group Ex. No. 1, Doc. B; Applicant Ex. No. 6.
4. The subject property is located near² applicant's church. This church facility, where the Assembly conducts three prayer services per week, is not at issue herein. Tr. p. 17.
5. Applicant also operates a community social center that is located on the same block as the subject property. The Assembly conducts various youth activities and substance abuse prevention programs at this center, which also is not at issue herein. Tr. p. 18.
6. Members of the Assembly commonly refer to the subject property as "Mother's house" because it was originally used to provide housing for aging widows whom were venerated in applicant's congregation as "Church Mothers" but could not take care of themselves or had no other place to stay. There were however, no "Church mothers" residing at the subject property during the tax year in question. Tr. pp. 27-28.
7. Applicant used Mother's house for other residential purposes, namely providing temporary housing to the needy, throughout the 1996 assessment year. It also held two or three church meetings at Mother's house during that time. Dept. Group Ex. No. 1, Doc. B; Tr. pp. 10, 27, 31.
8. One indigent family in need of temporary housing actually resided at Mother's house throughout the 1996 assessment year. Tr. pp. 27, 31.

2. Exact distance unspecified.

9. The family stayed at Mother's house pursuant to an arrangement whereby they paid "fake rent," which applicant held until the family was ready to move. It then returned any monies so paid when the family actually moved out. Tr. p. 30.
10. Applicant's spiritual leader is Pastor Jerry L. Jones Sr, who did not live at Mother's house in 1996. Tr. pp. 10, 31-32.
11. The Assembly was incorporated under the General Not For Profit Corporation Act of Illinois on November 3, 1971. Its organizational purposes are, per applicant's Articles of Incorporation, to promulgate the Christian faith "through the teaching and preaching of the gospel of our Lord and Savior Jesus Christ." Applicant Ex. No. 2.
12. Applicant's by-laws provide that it "accepts the Holy Scriptures as the inspired word of G-D" and that "the Scriptures, both the Old and New Testaments, are verbally inspired of G-D and are the revelation of G-D to man the infallible, authoritative rule of faith and conduct." Applicant Ex. No. 1.
13. Said by-laws further provide, *inter alia*, that: membership in the Assembly shall be open to those who give evidence of their faith in the Lord Jesus Christ and who voluntarily subscribe to its tenets of faith and agree to be governed by its constitution and bylaws; all funds for the maintenance of the Assembly shall be provided by voluntary contributions or the tithes and offerings of the members and friends of the organization; and, "spiritual management" of the assembly shall be vested in a Board of Deacons, which, together with the Pastor, shall meet on a monthly basis to transact the Assembly's routine business. *Id.*

CONCLUSIONS OF LAW:

An examination of the record establishes that this applicant has not demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exempting the subject property from 1996 real estate taxes. Accordingly, under the reasoning given below, the determination by the Department that said property was not in exempt use during the 1996 assessment year should be affirmed. In support thereof, I make the following conclusions:

A. Constitutional Considerations, Relevant Statutory Provisions and the Burden of Proof

Article IX, Section 6 of the Illinois Constitution of 1970 provides 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 power of the General Assembly granted by the Illinois Constitution operates as a limit on the power of the General Assembly to exempt property from taxation. 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, Inc. v. Johnson, 112 Ill.2d 542 (1986). Furthermore, Article IX, Section 6 is not a self-executing provision. Rather, it merely grants authority to the General Assembly to confer tax exemptions within the limitations imposed by the Constitution. Locust Grove Cemetery Association of Philo, Illinois v. Rose, 16 Ill.2d 132 (1959). Moreover, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions or limitations 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 that govern disposition of the instant proceeding are found in Section 200/19-40, which states as follows:

All property *used* exclusively for religious purposes, or used exclusively for school and religious purposes, or for orphanages and not leased or otherwise used with a view to a profit, is exempt [from real estate taxation], including 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 activities shall, as a condition of their employment or association, reside in the facility.

35 ILCS 200/15-40 (Emphasis added).

The Assembly also seeks exemption under Section 15-65 of the Property Tax Code, which, in relevant part, provides that:

All property of the following is exempt [from real estate taxation] when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

(a) institutions of public charity.

35 ILCS 200/15-65

It is well established in Illinois that a statute exempting property or an entity from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation. People Ex Rel. Nordland v. Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). Based on these rules of construction, Illinois courts have placed the burden of proof on the party seeking exemption and have required such party to prove by clear and conclusive

evidence that it falls within the appropriate statutory exemption. Metropolitan Sanitary District of Greater Chicago v. Rosewell, 133 Ill. App.3d 153 (1st Dist. 1985).

B. The Religious Use Exemption

Prior to 1909, it was a requirement for the exemption of property used for religious purposes that it be owned by the organization that claimed the exemption. Since that time however, a statutory amendment eliminated that requirement in cases that do not involve parsonages. The test of exemption then became (and, with the exemption of parsonages, still remains) use and not ownership. People ex rel Bracher v. Salvation Army, 305 Ill. 545 (1922). *See also*, American National Bank and Trust Company v. Department of Revenue, 242 Ill. App.3d 716 (2nd Dist. 1993). Therefore, it is necessary to examine the definition of "religious use" in order to determine whether the subject property is subject to exemption under 15-40.

The leading case on this topic is People ex rel. McCullough v. Deutsche Evangelisch Lutherisch Jehova Gemeinde Ungeanderter Augsburgischer Confession, 249 Ill. 132 (1911), wherein the Illinois Supreme Court articulated the following definition:

As applied to the uses of property, a religious purpose means a use of such property by a religious society or persons as a stated place for public worship, Sunday schools and religious instruction. McCullough at 136-137.

In applying this definition to the present case, one must be mindful that evidence of intended use is not equivalent to, and therefore legally insufficient to sustain applicant's burden of establishing actual, exempt use. Skil Corporation v. Korzen, 32 Ill.2d 249 (1965); Comprehensive Training and Development Corporation v. County of Jackson, 261 Ill. App.3d 37 (5th Dist. 1994). One must also remember that the word "exclusively," when used in Section 200/15-40 and other tax exemption statutes, means "the primary purpose for which property is used and not any secondary or incidental purpose." Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App.3d 186 (4th Dist. 1993).

Our courts have held that "if property is devoted, in a primary sense, to a religious purpose, the fact that it is incidentally used for secular purposes will not destroy the exemption."

McKenzie v. Johnson, 98 Ill.2d 89, 98 (1983), quoting First Congregational Church v. Board of Review, 254 Ill. 220 (1912). However, evidence of incidental religious uses is legally insufficient to sustain applicant's burden of proof. *Id.*

This record establishes that the subject property was primarily used to provide temporary housing for one *and only one* needy family throughout the 1996 assessment year. Consequently, the two or three church meetings held thereat constituted but isolated examples of incidental exempt use. *See, MacMurray College v. Wright*, 38 Ill. 2d 272 (1967).

Furthermore, the fact that the subject property was used as a home for "Church mothers" during tax years other than the one currently at issue is of no import herein. Nothing in Pastor Jones' testimony³ or the supporting documentation suggests that any member of the family living at the subject property in 1996 (hereinafter the "family") was considered a "Church mother." Nor can one argue that the subject property should be exempted as a parsonage because neither Pastor Jones nor any of the other statutorily-mandated personnel (pastor's immediate family, domestic workers, etc.) actually resided in the subject property during 1996.

The record also fails to disclose that the family lived at said property "as a condition of their ... association" with the Assembly, as required by the second paragraph of Section 200/15-40. Consequently, applicant has failed to prove that the subject property satisfies any of the use requirements contained in Section 15-40 of the Property Tax Code.⁴ Therefore, applicant has

3. Pastor Jones was the only witness to testify at the evidentiary hearing.

4. In connection with this conclusion, I take notice of a line of decisions holding that residential facilities, such as the one at issue herein, are not subject to exemption under Section 15-40 (or 15-65) unless applicant proves one of the two following conditions: one, that the resident-employee performs an exempt function, such as educational or religious duties, and is required by those same exempt duties to live in the residence; or, two, that the resident-employee performs his duties in furtherance of the institution's exempt purpose in the building. McKenzie v. Johnson, *supra*, at 99; Benedictine Sisters of the Sacred Heart v. Department of Revenue, 155 Ill. App.3d 325 (2nd Dist. 1987); Lutheran Child and Family Services of Illinois v. Department of Revenue, 160 Ill. App.3d 420 (2nd Dist. 1987); Cantigny Trust v. Department of Revenue, 171 Ill. App. 3d 1082 (2nd Dist. 1988); Girl Scouts of DuPage County Council, Inc. v. Department of Revenue, 189 Ill. App.3d 858 (1989).

also failed to prove that said property qualifies for exemption from 1996 real estate taxes under that provision.

C. The Charitable Exemption

Applicants seeking relief under Section 200/15-65 must prove both of the following propositions by clear and convincing evidence: First, that the property in question is owned by an entity that qualifies as an "institution of public charity[;]" and second, that said property is "exclusively used" for purposes that qualify as "charitable" within the meaning of Illinois law. Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156 (1968) (hereinafter "Korzen").

Analysis of the ownership requirement begins with the following definition of "charity," which the Korzen court used to analyze whether appellant's senior citizen's home was exempt from property taxes under the Revenue Act of 1939:

... a charity is a gift to be applied consistently with existing laws, for the benefit of an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare - or in some way reducing the burdens of government.

39 Ill.2d at 157 (citing Crerar v. Williams, 145 Ill. 625 (1893)).

The Korzen court supplemented this definition by noting that all "institutions of public charity":

- 1) have no capital stock or shareholders;

Here, the record is completely devoid any evidence proving what, if any, exempt functions the family performed while residing in the subject property. As such, the record is likewise barren of any evidence that would establish conformity with either of the above-stated criteria. Consequently, I conclude that the family's connection to the Assembly was limited to the mere fortuity of living in a facility that happened to be owned by the applicant.

Such happenstance is extremely attenuated compared to the above-cited factors, which focus on more concrete and abiding considerations like carrying out the terms an employment relationship. Therefore, any connection the family's residential use may have had to the Assembly's religious activities is legally insufficient to prove conformity with the criteria established in McKenzie v. Johnson, *supra*, and its progeny.

- 2) earn no profits or dividends, but rather, derive their funds mainly from public and private charity and hold such funds in trust for the objects and purposes expressed in their charters;
- 3) dispense charity to all who need and apply for it;
- 4) do not provide gain or profit in a private sense to any person connected with it; and,
- 5) do not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses.

Korzen, *supra*, at 157.

The above characteristics are not rigid requirements, but rather guidelines to be considered with an overall focus on whether the applicant serves the public interest and lessens the State's burden. DuPage County Board of Review v. Joint Comm'n on Accreditation of Healthcare Organizations, 274 Ill. App.3d 461, 466 (2nd Dist. 1995). In applying them, however, one must remember that "statements of the agents of an institution and the wording of its governing documents evidencing an intention to [engage in exclusively charitable activity] do not relieve such an institution of the burden of proving that ... [it] actually and factually [engages in such activity]." Morton Temple Association v. Department of Revenue, 158 Ill. App. 3d 794, 796 (3rd Dist. 1987). Therefore, "it is necessary to analyze the activities of the [applicant] in order to determine whether it is a charitable organization as it purports to be in its charter." *Id.*

This applicant's organizational documents indicate that the primary focus of its operations is striving to fulfill Christian teachings. Our courts have recognized that the religious and charitable exemptions can be interrelated in some contexts. Fairview Haven v. Department of Revenue, 153 Ill. App.3d 763 (4th Dist. 1987), (hereinafter "Fairview Haven") (granting exemption to part of a nursing home operated by a not-for-profit corporation organized and supported by four separate congregations of the Apostolic Christian Church in America); Congregational Sunday School and Publishing Society v. Board of Review, 290 Ill. 108 (1919) (holding in favor of exempting real estate used exclusively for publication, sale and distribution

of religious books); Evangelical Teacher Training Association v. Novak, 118 Ill. App.3d 21 (2nd Dist. 1983). (hereinafter "Novak") (sustaining real estate tax exemption claim raised by an organization that, *inter alia*: (1) was organized by five Bible colleges for purposes of upgrading Christian education at various levels, including seminary studies, adult education, and Sunday schools; (2) sent its staff members to speak at local chapel services and classes, as well as national conferences on the subject of Christian education; and (3) prepared materials for 14 separate Bible course offerings, which included texts, cassette tapes, overhead masters, instructor's guides and lesson plans).

The Novak court explained the nature and extent of this interrelationship as follows:

while the analysis required for charitable purposes may not be identical in all situations with that applicable to the religious exemption, it is a fair inference from the authorities that many of the same factors may be common to both claims for exemption in determining whether a religious or secular purpose is being performed. Thus, in [Congregational Sunday School], the court noted, "they are so closely associated that we will discuss them together." *Congregational Sunday School & Publishing Society v. Board of Review*, (1919) 290 Ill. 108, 112. See also, *Scripture Press Foundation v. Annunzio*, (1953) 414 Ill. 339, 357-58.

Novak, *supra* at 26. [Citations as they appear in the original].

This approach creates confusion by blurring technical distinctions between the religious and charitable exemptions. Nevertheless, I do not think this is a proper case for employing such a hybrid analysis because the subject property was not used as a nursing home in 1996. Nor was it used for publishing, selling or distributing religious books during that time. Rather, as noted above, its use was (with very minor, incidental exceptions that are not relevant to this discussion) limited to providing temporary housing for only one needy family.

My analysis, *supra* at pp. 7-9 demonstrates that this use does not qualify as "exclusively religious" within the meaning of Section 200/15-40, mostly because the record fails to disclose the nature and extent of the family's affiliation with the Assembly. Furthermore, the fact that

applicant housed but one family at the subject property during 1996 establishes that any "charity" dispensed thereat was not "for the benefit of an indefinite number of persons," as required by Korzen, *supra*.

Applicant may have encountered practical or business-related barriers that made it impractical to extend "charity" to other persons. However, the record again fails to disclose pertinent information, such as the precise nature of any barriers the Assembly may have faced and/or the steps which applicant might have taken to overcome them.

More importantly, the record does not disclose anything about the process by which applicant chose the family that benefited from residing in the subject property. Without this information, I am unable to discern whether applicant housed the lone family in the subject property because that family was in fact the only one that applied to live there. Accordingly, the Assembly has failed to prove that it actually "dispens[ed] charity to all who need[ed] and appl[ied] for it," as directed by Korzen.

Applicant attempts to refute these conclusions by relying on the "fake rent" arrangement. Applicant posits that this arrangement provides evidence of exempt use because the family received a full refund of any "rents" paid when it moved out. Thus, applicant argues that the subject property was not used for the non-exempt purpose of generating income for its owner. People ex.rel. Baldwin v. Jessamine Withers Home, 312 Ill. 136 (1924); Turnverein "Lincoln" v. Board of Appeals of Cook County, 358 Ill. 135 (1934); Salvation Army v. Department of Revenue, 170 Ill. App.3d 336, 344 (2nd Dist. 1988).

This argument fails because applicant has failed to prove that it satisfies other relevant criteria, namely that residence in the subject property was available to an "indefinite number of persons," as required by Korzen, *supra*, during the tax year in question. Such a deficiency is not

cured by evidence establishing conformity with other exemption requirements. For this and all the aforementioned reasons, I conclude that the subject property does not qualify for exemption under Section 200/15-65.

D. Final Considerations and Summary

Applicant seeks to alter the above conclusions by relying on two decisions from other jurisdictions, Salt and Light Company, Inc. v. Mount Holly Township, 15 N.J. Tax 274 (1996) and Topeka Presbyterian Manor, Inc. v. Board of County Commissioners of Shawnee County, 195 Kan. 90 (1965). These cases are inapplicable herein because the above-cited authorities provide a plethora of Illinois case law for addressing all issues raised by this exemption complaint, which fails for want of sufficient evidence proving compliance with the criteria established therein.

The Assembly also argues that the subject property should be exempt because its uses were consistent with those of other properties owned by applicant which Pastor Jones testified were exempt from taxation. (Tr. p. 24). However, applicant did not substantiate Pastor Jones testimony with appropriate Departmental Exemption Certificates. Therefore, this testimony, standing alone, is not technically sufficient to establish that the Department in fact granted suitable exemptions. Even if it were, exemptions issued to properties *other than* the one currently at issue are not dispositive of the present inquiry.

That inquiry focuses solely on whether applicant has sustained its burden of proving that the subject property itself was used for exempt purposes during the 1996 assessment year. The preceding analysis identifies numerous evidentiary deficiencies which provide the basis for concluding that applicant has not. Due to these failures of proof, I therefore recommend that the

Department's determination denying the subject property exemption from 1996 real estate taxes be affirmed.

WHEREFORE, for all the above-stated reasons, it is my recommendation that real estate identified by Cook County Parcel Index Number 25-17-301-021 not be exempt from 1996 real estate taxes.

Date

Alan I. Marcus
Administrative Law Judge