

**PT 99-18**  
**Tax Type: PROPERTY TAX**  
**Issue: Religious Ownership/Use**

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

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<b>NEW HOPE CHURCH</b>	)	<b>Docket #</b>	<b>94-44-4</b>
<b>Applicant</b>	)		
	)		
<b>v.</b>	)		
	)	<b>Parcel Index #</b>	<b>01-17-307-000</b>
<b>THE DEPARTMENT OF REVENUE</b>	)		
<b>OF THE STATE OF ILLINOIS</b>	)		

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**RECOMMENDATION FOR DISPOSITION**

Synopsis:

The hearing in this matter was held on June 3, 1998, at 2309 West Main Street, Marion, Illinois, to determine whether or not Johnson County Parcel Index No. 01-17-307-000 qualified for exemption from real estate taxation for the 1994 assessment year.

Rev. Albert R. Jenkins, pastor of the New Hope Church in Goreville, (hereinafter referred to as the "Church") was present and testified on behalf of himself and the church.

During 1994, Johnson County Parcel No. 01-17-307-000 was improved with four buildings. Building No. 1 contained three workshops on the ground floor and an area which beginning in 1995 was used as a chapel on the upper floor. Building No. 2, known as the fellowship house, when completed will contain a dining room, kitchen, living room, meeting room, an office, and two bedrooms. Building No. 3 is a house trailer which during 1994 was used by Rev. Jenkins as his parsonage. Building No. 4 is an outside dry hole toilet.

The issues in this matter include, first, whether the church is a religious organization; secondly, whether the church owned this parcel during all or part of the 1994 assessment year; and finally, whether the church was in the process of adapting this parcel and the buildings thereon for religious use during the 1994 assessment year or actually used this parcel and buildings for primarily religious purposes during said year.

Following the submission of all of the evidence and a review of the record, it is determined that the church is a religious organization. It is also determined that Rev. Albert R. Jenkins and Lois M. Jenkins, his wife, owned the parcel here in issue during the period March 15, 1994, through December 31, 1994. It is further determined that during the period March 15, 1994, through December 31, 1994, the church was in the process of adapting the chapel area of Building No. 1 for religious use. It is finally determined that the remainder of Building No. 1 and the other buildings on this parcel were not in the process of adaptation for religious use or primarily used for religious purposes during the 1994 assessment year.

It is therefore recommended that the chapel located in Building No. 1 and a proportionate amount of the land on which Building No. 1 is located be exempt from real estate tax for the 80% of the 1994 assessment year that it was owned by Rev. and Mrs. Jenkins. It is further recommended that the remainder of Building No. 1, the other buildings on this parcel, and the remainder of Johnson County Parcel Index No. 01-17-307-000 remain on the tax rolls for the 80% of the 1994 assessment year that it was owned by Rev. and Mrs. Jenkins.

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 Johnson County Parcel Index No. 01-17-307-000 did not qualify for exemption during the 1994 assessment year, was established by the admission in evidence of Department's Exhibit Nos. 1 through 6B.

2. On November 29, 1994, the Johnson County Board of Review transmitted to the Department an Application for Property Tax Exemption To Board of Review concerning the parcel here in issue for the 1994 assessment year. (Dept. Ex. No. 2)

3. On July 18, 1996, the Department advised the church that it was denying the exemption of this parcel and the buildings thereon for the reason that this parcel was not in exempt use in 1994. (Dept. Ex. No. 3)

4. By a letter dated July 24, 1996, Rev. Jenkins requested a formal hearing in this matter. (Dept. Ex. No. 4)

5. The hearing in this matter, conducted on June 3, 1998, was held pursuant to that request. (Dept. Ex. No. 5)

6. At the pre-trial conference in this matter, the Administrative Law Judge advised Rev. Jenkins that it would be appropriate for him or the church to be represented by legal counsel. Following the pre-trial conference, Rev. Jenkins advised the Administrative Law Judge by letter that he had not found an attorney, but wished to proceed with the hearing without counsel. (Appl. Ex. No. 1)

7. Rev. Albert R. Jenkins and Lois M. Jenkins, his wife, acquired Johnson County Parcel Index No. 01-17-307-000 on March 15, 1994. (Appl. Ex. No. 10)

8. On March 16, 1994, Rev. Albert R. Jenkins executed a document granting his wife, Lois M. Jenkins, a power of attorney concerning the sale of Johnson County Parcel Index No. 01-17-307-000 to the church. (Dept. Ex. No. 2F)

9. On March 24, 1994, Rev. Jenkins and Mrs. Jenkins, as sellers, entered into a contract for deed with the church, as buyer, to convey Johnson County Parcel Index No. 01-17-307-000 to the church. The contract for deed provided that the church would make monthly payments in the amount of \$625.00 per month for 240 months. This contract for deed also provided that the church would pay the real estate taxes on the property. (Appl. Ex. No. 4)

10. By a letter dated May 17, 1994, the sellers agreed to delay the start date on the payments required by the contract for deed for thirty months. (Appl. Ex. No. 15)

11. Although the contract for deed provides that the church as the buyer will pay the real estate taxes on this parcel, in fact no real estate tax bills have been received on the property and no real estate taxes have been paid. (Tr. p. 15)

12. By a letter from the contract sellers dated March 14, 1996, the members of the board of the church were advised that they should begin making payments on the contract for deed in the amount of \$250.00 per month beginning on May 15, 1998. At the hearing on June 3, 1998, in response to a question posed by the Department, Rev. Jenkins stated that the church had not made any payments on the contract for deed to the contract sellers before May 15, 1998. (Appl. Ex. No. 15, Tr. pp. 14 & 15)

13. The church was incorporated pursuant to the "General Not For Profit Corporation Act," of Illinois, on December 19, 1984, for religious purposes. (Dept. Ex. No. 2K)

14. When Rev. and Mrs. Jenkins purchased this parcel in March 1994, the ground floor of Building No. 1 included three workshops, each of which measured 17 feet by 70 feet. The upper floor of Building No. 1 included a chapel which measured 35 feet by 48 feet. When Rev. and Mrs. Jenkins acquired Building No. 1, the back of the building needed to be closed in and finished. In addition, Building No. 1 needed bathrooms constructed as well as a septic system. The church intends to use the workshops in its young men's rehabilitation program. (Dept. Ex. Nos. 2-O & 2P)

15. Building No. 2, the fellowship house, when Rev. and Mrs. Jenkins acquired it, was in need of repair and finishing. All walls required insulation and the rear wall needed siding. There also was a tree growing through the ground floor and up through the roof. The tree needed to be removed and the floor and roof repaired. A septic system needed to be installed as well as a water line. The church intends to remodel this building into a meeting place and dwelling for its young men's rehabilitation program. (Dept. Ex. Nos. 2-O & 2P)

16. The young men's rehabilitation program is a program for young men of the age of 18 or older who have had problems with alcohol or drug abuse or have been in trouble with the law. This program includes daily Bible study, training in personal hygiene and living skills, and

academic learning with training in areas of technical subjects such as basic electricity, basic refrigeration, and carpentry. Where necessary, basic school subjects such as reading, writing, English, and math will be taught. The young men will be expected to do chores, attend daily Bible study, and to attend religious services and Bible study on the weekends. (Dept. Ex. No. 2P)

17. The in-residence rehabilitation program for young men did not begin until April 1996. (Appl. Ex. 10)

18. There is no charge for a young man to participate in this program. (Tr. p. 26)

19. The mobile home, Building No. 3, which Rev. Jenkins intended to use as a parsonage, required a septic system, a front entry deck, a rear exit deck, and underpinning. (Dept. Ex. No. 2-O)

20. During April 1994, the septic system and an air conditioner for the mobile home, Building No. 3, were installed and Rev. Jenkins moved into and occupied that building. (Appl. Ex, No. 10)

21. Building No. 4, the dry hole toilet, could not be used for the church's purposes until a hand washing facility was installed. The hand washing facility also required a septic system, water lines, and a water heater. (Dept. Ex. No. 2-O)

22. Rev. Jenkins hoped to hold religious services in the chapel in Building No. 1 at Christmas time in 1994. By that time, the work that needed to be done to allow the chapel to be used was completed, including the construction of two restrooms. After the water was turned on in the restrooms during December, there was a hard freeze and the pipes froze. The pipes froze because they had not been correctly installed. After the church tore out the drywall and repaired the water pipes the first religious service was held in the chapel in Building No. 1 on May 7, 1995. Since that date, there has been a worship service held in the chapel in Building No. 1 every Sunday, excluding one Sunday a month. One Sunday each month Rev. Jenkins is in Skokie, Illinois. (Tr. pp. 19-21)

23. On December 31, 1994, neither the fellowship house, which is Building No. 2, nor the dry hole toilet, which is Building No. 4 was completed or useable. In addition, Building No. 1 was not usable because of the frozen water line. (Tr. pp. 19 & 20)

24. During 1995, the first year that Rev. Jenkins conducted religious services in the chapel, the average attendance was three persons. (Tr. p. 25)

25. During 1994, the church paid the utilities and the insurance on the buildings on this parcel. The church made no payments in lieu of rent to the owners of this parcel, Rev. and Mrs. Jenkins, during 1994. (Dept. Ex. No. 2T, Appl. Ex. No. 11)

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.

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).

Concerning property used for religious purposes, 35 **ILCS** 200/15-40 provides 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 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. (Emphasis supplied)

The evidence clearly showed that Rev. and Mrs. Jenkins allowed the church to use the chapel area of Building No. 1 for religious worship beginning on May 7, 1995, and continuing to the date of the hearing. A religious purpose pursuant to the constitutional provision concerning exemption from taxation is a use of property by a religious society or organization as a place for worship, Sunday schools, and religious instruction. People ex rel. McCullough v. Deutsche Gemeinde, 249 Ill. 132 (1911). To qualify for exemption, a property must in fact be used for religious purposes. An exemption will be denied if it is not so used. Thus, for example, a church property that is boarded up and vacant will not qualify for exemption. Antioch Missionary Baptist Church v. Rosewell, 119 Ill.App.3d 981 (1<sup>st</sup> Dist. 1983). Since Rev. Jenkins does not charge the church rent to use the chapel area in Building No. 1 it cannot be said that he is leasing or otherwise using that area for profit. See American National Bank v. Department of Revenue, 242 Ill.App.3d 716 (2<sup>nd</sup> Dist. 1993), and Victory Church v. Department of Revenue, 264 Ill.App.3d 919 (1<sup>st</sup> Dist. 1994).

In the case of Weslin Properties, Inc. v. Department of Revenue, 157 Ill.App.3d 580 (2<sup>nd</sup> Dist. 1987), Weslin Properties, on May 26, 1983, purchased a 24.3 acre tract to be developed into an Urgent Care Center, hospital, and related medical facilities. During 1983, Weslin Properties, Inc. approved a site plan and hired an architect. During 1984, construction on the Urgent Care facility began. In 1985, the Urgent Care Center was completed and occupied. The Court held that the Urgent Care facility qualified for exemption during 1983 but that the remainder of said parcel did not qualify for exemption during that year. The plans for the remainder of said parcel were not complete and Weslin Properties had not satisfied the Court that during 1983 all of the intended uses of the remainder of that parcel would qualify for exemption.

In this case the chapel had been adapted and was ready for use by early December 1994. However, worship services did not begin until May 1995, because of the water damage resulting from the frozen pipes. The chapel in Building No. 1 although it was owned by Rev. and Mrs. Jenkins was adapted for use by the church beginning shortly after it was acquired by Rev. and Mrs. Jenkins. Since the chapel was used for religious purposes beginning on May 7, 1995, I conclude that the chapel area of Building No. 1, and a proportionate part of the land on which it stands qualified for exemption from real estate taxation during the period March 15, 1994, through December 31, 1994, because it was being adapted for religious use during that period.

In the case of Christian Action Ministry v. Department of Local Government Affairs, 74 Ill.2d 51 (1978), the Illinois Supreme Court determined that the contract purchaser of a piece of property was the owner for real estate tax exemption purposes. In that case the Ministry entered into a contract for deed, paid \$30,000.00 down and agreed to and did make monthly payments of \$2,500.00 per month. In holding that the Ministry had a sufficient ownership interest in the property to qualify for exemption, the court noted that the Ministry had a substantial monetary interest in the property and was liable for the payment of real estate taxes.

In the instant case, during 1994, and in fact through May 15, 1998, the church has made no payments to the contract sellers. Also no real estate taxes have been paid on this parcel by the church. I therefore conclude that the church has not established that it has a sufficient ownership interest to qualify for a property tax exemption, as required by the Court in the Christian Action Ministry case. It therefore cannot be said that the church is the beneficial owner of this parcel for real estate tax exemption purposes.

As previously set forth in 35 **ILCS** 200/15-40 for a parsonage to qualify for exemption from real estate taxes, it must be owned by the church. In Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill.App.3d 678 (4<sup>th</sup> Dist. 1994) the Court held that a parsonage previously owned by a church, in which the minister for the church was being allowed to acquire an ownership interest, did not qualify for exemption because it was not owned by the church.

The statutory provision concerning the exemption of charitable organizations found at 35 ILCS 200/15-65 provides in part as follows:

All property of the following is exempt 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;  
(b) beneficent and charitable organizations incorporated in any state of the United States....

It should be pointed out that to qualify for an exemption from taxation as a charity, the owner must demonstrate that there is ownership by a religious or charitable organization and use for charitable purposes. Fairview Haven v. Department of Revenue, 153 Ill. App. 3d 763 (4<sup>th</sup> Dist. 1987); and Christian Action Ministry v. Department of Local Government Affairs, 74 Ill.2d 51 (1978). In this case Rev. and Mrs. Jenkins, who own the parcel here in issue, are neither a religious or charitable organization. Consequently the areas of Buildings Nos. 1 and 2 which the church intends to use in the young men's rehabilitation program did not qualify for exemption during 1994, because they were not owned by a religious or charitable organization.

In the case of People ex rel. Pearsall v. The Catholic Bishop of Chicago, 311 Ill. 11 (1924), the Illinois Supreme Court held that the mere fact that a property was intended to be used for an exempt purpose was not sufficient to exempt said property. The Court required that the actual primary exempt use must have begun for the property to be exempt.

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). Consequently, it is clear that the burden of proof is on the party seeking to qualify for an exemption.

I conclude that it has been established that the church is a religious organization. It has also been established that Rev. Albert R. Jenkins and Lois M. Jenkins, his wife, owned the parcel here in issue during the period March 15, 1994, through December 31, 1994. It is further established that during the period March 15, 1994, through December 31, 1994, the church was in the process of adapting the chapel area of Building No. 1 for religious use. It is finally established that the remainder of Building No. 1 and the other buildings on this parcel were not in the process of adaptation for religious use or primarily used for religious purposes during the 1994 assessment year. It is also established that Rev. and Mrs. Jenkins owned the subject parcel and they are neither a religious or charitable organization. Therefore, this parcel and the buildings thereon cannot qualify for exemption pursuant to those statutory provisions that require both ownership and use by a religious or charitable organization.

I therefore recommend that the chapel area of Building No. 1 and a proportionate amount of the land on which Building No. 1 is located, all being located on Johnson County Parcel Index No. 01-17-307-000 be exempt from real estate taxation for the 80% of the 1994 assessment year that said parcel was owned by Rev. and Mrs. Jenkins

It is further recommended that the remainder of Building No. 1, the other buildings on this parcel, and the remainder of Johnson County Parcel Index No. 01-17-307-000 remain on the tax rolls for the 80% of the 1994 assessment year that said parcel was owned by Rev. and Mrs. Jenkins.

Respectfully Submitted,

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George H. Nafziger  
Administrative Law Judge  
February 8, 1999