

PT 99-8

Tax: PROPERTY TAX
Issue: Religious Ownership/Use

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

IMMANUEL BAPTIST CHURCH) A.H. Docket #	98-PT-0018
Applicant)	
v.) Docket #	97-64-4
)	
THE DEPARTMENT OF REVENUE) Parcel Index #	08-01-105-005-0040
OF THE STATE OF ILLINOIS)	

RECOMMENDATION FOR DISPOSITION

Synopsis:

The hearing in this matter was held on June 1, 1998, at 2309 West Main Street, Marion, Illinois, to determine whether or not Massac County Parcel Index No. 08-01-105-005-0040 qualified for exemption from real estate taxation for all or part of the 1997 assessment year.

Rev. Terry W. Cathey, pastor of the Immanuel Baptist Church, (hereinafter referred to as the "Applicant") was present and testified on behalf of the applicant. Also present was Ms. Tammy Wahaib, Clerk of the Board of Review of Massac County.

The issues in this matter include, first, whether the applicant is a religious organization; secondly, whether the applicant owned this parcel during all or part of the 1997 assessment year; and finally, whether the applicant used this parcel for religious or exempt purposes or was in the process of adapting said parcel for religious or exempt use during all or part of the 1997 assessment year. Following the submission of all of the evidence and a review of the record, it is determined that the applicant is a religious organization. It is further determined that the

applicant owned this parcel from and after January 14, 1997. Finally, it is determined that the applicant during the period January 14, 1997, through December 31, 1997 was not adapting this parcel for religious or exempt use nor using said parcel for religious or exempt purposes.

It is therefore recommended that this parcel remain on the tax rolls for the 1997 assessment year.

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 this parcel did not qualify for exemption for the 1997 assessment year, was established by the admission in evidence of Department's Exhibit Nos. 1 through 6A.

2. On September 9, 1997, the Massac 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 1997 assessment year. (Dept. Ex. No. 2)

3. On January 29, 1998, the Department advised the applicant that it was denying the exemption of this parcel because said parcel was not in exempt use. (Dept. Ex. No. 3)

4. On February 17, 1998, Rev. Cathey requested a formal hearing in this matter. (Dept. Ex. No. 4)

5. The hearing in this matter conducted on June 1, 1998, was held pursuant to that request.

6. At the pre-trial conference in this matter, the Administrative Law Judge advised Rev. Cathey that it would be appropriate for the applicant to be represented by legal counsel at the hearing. Rev. Cathey, speaking on behalf of the applicant, indicated that the applicant had determined to proceed without counsel. (Tr. p. 8)

7. This hearing was originally scheduled for June 3, 1998 at 11:30 A.M. The week before the hearing Rev. Cathey called the Administrative Law Judge and requested a continuance because he had surgery scheduled for Wednesday morning, June 3, 1998. The Administrative Law Judge had time available to hold this hearing on June 1, 1998 at 9:00 A.M. This was

agreeable with Rev. Cathey. Consequently, the hearing was held on June 1, 1998 at 9:00 A.M. (Tr. pp. 7 & 8)

8. During 1997, the applicant had approximately 500 members. During 1997, the average attendance at worship was approximately 150 and at Sunday school it was approximately 120. (Tr. p. 8)

9. During 1997, the applicant held worship services at 10:30 A.M. on Sunday mornings, 7:00 P.M. on Sunday evenings, and 7:00 P.M. on Wednesday evenings. There also was Sunday school on Sunday mornings at 9:30 A.M. (Tr. pp. 8 & 9)

10. The applicant acquired the parcel here in issue pursuant to a warranty deed dated January 14, 1997. The deed also provided that the grantor would deliver possession of that parcel to the applicant on or before April 16, 1997. (Dept. Ex. No. 2A)

11. This parcel is located directly across the street from the applicant's church building. The applicant acquired this parcel with the intention of using it for additional parking. (Dept. Ex. No. 2D)

12. At the time that the applicant took possession of this parcel, the house was empty. The house remained vacant and neither the house nor the parcel was used for any purpose from the date that the applicant received possession of this parcel until the contractor began to demolish the house during late October 1997. (Tr. p. 11)

13. The demolition of the house was not completed until January 1998, because the contractor was required to wait until he got a larger machine to remove the house foundation. (Appl. Ex. No. 1, Tr. p.11)

14. On the date of the hearing, June 1, 1998, the parking lot was not finished because the applicant was waiting on better weather and church finances before completing the project. (Tr. p. 12)

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, . . . 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.

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).

Based on the foregoing, I conclude that the applicant is a religious organization. I also conclude that the applicant has owned this parcel since January 14, 1998, and has been in possession of said parcel since April 16, 1998.

During the period from April when the applicant obtained possession of this parcel until the date when the demolition of the house began in late October 1997, the house remained vacant and no evidence was offered that this parcel was used for any purpose. 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. IN THE CASE OF ANTIOCH MISSIONARY BAPTIST CHURCH V. ROSEWELL, 119 ILL.APP.3D 981 (1ST DIST. 1983), THE COURT HELD THAT PROPERTY WHICH WAS VACANT AND NOT USED DID NOT QUALIFY FOR THE STATUTORY EXEMPTION AS PROPERTY USED EXCLUSIVELY FOR RELIGIOUS PURPOSES REGARDLESS OF THE OWNER S INTENT.

THE DEMOLITION OF THE HOUSE ON THIS PARCEL BEGAN IN LATE OCTOBER 1997 AND WAS COMPLETED IN JANUARY OF 1998. AS OF THE DATE OF THE HEARING IN THIS MATTER, CONSTRUCTION OF A PARKING LOT HAD NOT BEGUN AND THE APPLICANT WAS WAITING FOR BETTER WEATHER AND CHURCH FINANCES TO COMPLETE THE PROJECT. NO EVIDENCE WAS OFFERED AS TO WHEN THE APPLICANT INTENDED TO COMPLETE THE PARKING LOT.

IN THE CASE OF WESLIN PROPERTIES, INC. V. DEPARTMENT OF REVENUE, 157 ILL.APP.3D 580 (2ND 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 PARKING

LOT HAD NOT BEEN COMPLETED AS OF THE DATE OF THE HEARING AND NO EVIDENCE WAS OFFERED AS TO WHEN A PARKING LOT WOULD BE COMPLETED, IF EVER, OR FOR WHAT OTHER PURPOSE THIS PARCEL MIGHT POSSIBLY BE USED.

I THEREFORE CONCLUDE THAT THE APPLICANT HAS FAILED TO ESTABLISH THAT DURING THE PERIOD JANUARY 14, 1997, THROUGH DECEMBER 31, 1997, THAT IT WAS EITHER ADAPTING THIS PARCEL FOR RELIGIOUS OR EXEMPT USE OR USING SAID PARCEL FOR RELIGIOUS OR EXEMPT PURPOSE.

I therefore recommend that Massac County Parcel Index No. 08-01-105-005-0040 remain on the tax rolls.

Respectfully Submitted,

George H. Nafziger
Administrative Law Judge
January 12, 1999