

**PT 08-20**

**Tax Type: Property Tax**

**Issue: Religious Ownership/Use**

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

---

---

**ST. THOMAS SYRO MALABAR  
CATHOLIC DIOCESE OF ILLINOIS,**

**APPLICANT**

**v.**

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

**Docket No: 07-PT-0068**

**Real Estate Exemption**

**For 2006 Tax Year  
P.I.N. 15-07-210-024-0000**

**Cook County Parcel**

**Kenneth J. Galvin  
Administrative Law Judge**

---

---

**RECOMMENDATION FOR DISPOSITION**

**APPEARANCES:** Mr. Donald K. Rubin, Law Offices of Rubin & Morris, LLC, on behalf of St. Thomas Syro Malabar Catholic Diocese of Illinois; Mr. Marc Muchin, Special Assistant Attorney General, on behalf of the Department of Revenue of the State of Illinois.

**SYNOPSIS:**

This proceeding raises the issue of whether real estate identified by Cook County Parcel Index Number 15-07-210-024-0000 (hereinafter the "subject property") qualifies for exemption from 2006 real estate taxes under 35 ILCS 200/15-40, wherein all property used exclusively for religious purposes is exempted from real estate taxation.

The controversy arises as follows: On July 19, 2007, St. Thomas Syro Malabar Catholic Diocese of Illinois (hereinafter "St. Thomas" or the "Diocese") filed an

Application for Property Tax Exemption with the Cook County Board of Review (hereinafter the “Board”). The Board reviewed St. Thomas’ application and recommended to the Illinois Department of Revenue (hereinafter the “Department”) that a partial year exemption be granted from June 2, 2006 through December 31, 2006. Dept. Ex. No. 1. The Department rejected the Board’s recommendation in a determination dated August 30, 2007, finding that the subject property was not in exempt use in 2006. Dept. Ex. No. 2. On September 20, 2007, St. Thomas filed a request for a hearing as to the denial and presented evidence at a formal evidentiary hearing on August 21, 2008, with Mr. Robert Nickola, an Architect with Jaeger, Nickola & Associates, and Father Roy Joseph Kaduppil (hereinafter “Father Roy”) testifying. Following submission of all evidence and a careful review of the record, it is recommended that the Department’s denial be affirmed.

**FINDINGS OF FACT:**

1. Dept. Ex. Nos. 1 and 2 establish the Department’s jurisdiction over this matter and its position that the subject property was not in exempt use, or being prepared for exempt use, in 2006. Tr. pp. 10-11; Dept. Ex. Nos. 1 and 2.
2. The Syro Malabar Catholic Church, consisting of 100,000 congregants, is part of the Eastern Catholic Church, with congregants mainly from India who have migrated to the United States. The Church traces its origin to St. Thomas who came to India and established the Church. In 2001, Pope John Paul formed the St. Thomas Syro Malabar Catholic Diocese of Chicago, which is comprised of approximately 1,000 families. Tr. pp. 53-57; App. Ex. A.

3. The Diocese was incorporated on May 21, 2001 under the Illinois “Not-For Profit Corporation Act.” The Diocese is in good standing with the State of Illinois as of August, 2008. The Diocese operates under a set of Bylaws. Tr. pp. 59-60; App. Ex. B.
4. The Diocese is exempt from Illinois sales tax as of July 26, 2002. Tr. pp. 60-62; App. Ex. C.
5. The Diocese is exempt from income tax under Section 501(c)(3) of the Internal Revenue Code. The Diocese is listed in “The Official Catholic Directory” for 2006. Tr. pp. 62-64; App. Ex. D.
6. St. Thomas purchased the property by warranty deed on June 2, 2006. Congregants loaned the Diocese \$787,500, on a long-term basis, interest-free, to purchase the subject property. Tr. pp. 64-72, 87-90; App. Ex. E, F, G, H and V.
7. When St. Thomas purchased the property, there were two tenants. Leases with the tenants were terminated on June 30, 2006. Tr. pp. 73-75; App. Ex. I and J.
8. The intended use of the subject property is for a central office building for the Diocese. The subject property is within one mile of St. Thomas’ cathedral church. The Bishop and Vicars General, who act as assistants to the Bishop, and St. Thomas’ Chancellor and Chief Financial Officer will have offices on the subject property. Ministries for family, youth and children will also be located on the subject property. Tr. pp. 64-66, 80.
9. On November 10, 2006, the Bishop sent a letter to congregants requesting that they contribute one-week’s paycheck, if possible, or \$250, toward the purchase, *inter alia*, of the subject property. Tr. pp. 82-84; App. Ex. W.

10. On August 25, 2006, Mr. Nickola received a request from Father Roy to tour the subject property in order to prepare a proposal for architectural renovation of the property. Mr. Nickola toured the building on August 31, 2006 for 5 hours. He walked through all four floors of the unoccupied building. After this tour, two architectural employees surveyed the building because no existing documentation of the building was available. On September 15, 2006, Mr. Nickola prepared a “Letter of Agreement for Schematic Architectural and Engineering Services for Determining Scope of Work” for the property located at 5544 St. Charles Road, in Berkely, Illinois. The “Letter of Agreement” was signed by Father Roy on December 7, 2006. Tr. pp. 14-16, 25-26; App. Ex. K and S.
11. The Letter of Agreement detailed the work to be done in three phases. Phase one required studying the existing building architecturally. Phase two called for surveying the existing building mechanically to look at mechanical, electrical and plumbing systems. Phase three called for the production of an owner’s space use program for St. Thomas’ use of the building and how this use would fit within the scheme of the building. Tr. pp. 14-15; App. Ex. K.
12. Mr. Nickola found that the subject property was a 40 year old building that had a 40 year old mechanical system in need of revitalization or replacement. There was a rooftop air conditioner that no longer worked. The building’s electrical distribution system had some code violations. Tr. pp. 15-18.
13. As a result of the tour by Mr. Nickola and the architectural employees, Mr. Nickola was able to provide St Thomas with a “Preliminary Assessment of Potential Project Budget,” dated February 13, 2007. This Assessment estimated that the existing

building could be remodeled for \$743,325, that an addition to the first floor would cost \$367,325, and that there would be additional costs for asphalt paving, concrete walks and curbs, landscaping and site lighting. Tr. pp. 19-21; App. Ex. L.

14. As a result of the tour by Mr. Nickola and the architectural employees, Mr. Nickola was able to provide St Thomas with “Chancery Building Remodeling” diagrams dated February 22, 2007, consisting of computer drawings of the four floors of the building, and floor plans showing the space usage requirements of the floors, including offices, reception and conference spaces. The space usage was determined after meeting with the Diocese. Tr. pp. 29-34; App. Ex. M.

15. Mr. Nickola contacted the Building Director of the Village of Berkeley in the Fall of 2006. At that time, he inquired from the Village as to whether the Diocese could occupy the second floor only, without bringing the other floors up to code. On May 2, 2007, Don Morris, Building Director for the Village of Berkeley wrote Mr. Nickola detailing the applicable local and national building codes, and identified the numerous violations and prior citations of the building. Mr. Morris’ letter detailed the work that would be required by St. Thomas before submitting a permit request for building renovation and occupancy. Tr. pp. 41-46; App. Ex. P.

**CONCLUSIONS OF LAW:**

An examination of the record establishes that St. Thomas has not demonstrated by the presentation of testimony, exhibits and argument, evidence sufficient to warrant an exemption of the subject property for the 2006 tax year. In support thereof, I make the following conclusions.

Article IX, Section 6 of the Illinois Constitution of 1970 limits the General Assembly's power to exempt property from taxation 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 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 v. Johnson, 112 Ill. 2d 542 (1986). Furthermore, Article IX, Section 6 does not in and of itself, grant any exemptions. Rather, it merely authorizes the General Assembly to confer tax exemptions within the limits imposed by the constitution. Locust Grove Cemetery v. Rose, 16 Ill. 2d 132 (1959). Thus, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App. 3d 497 (1<sup>st</sup> Dist. 1983). In accordance with its constitutional authority, the General Assembly enacted section 15-40 of the Property Tax Code which exempts property used exclusively for religious purposes. 35 ILCS 200/15-40 (1996).

The Illinois Supreme Court defined the term "religious use" as follows:

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.

People ex rel. McCullough v. Deutsche Evangelisch Lutherisch Jehova Gemeinde Ungeanderter Augsburgischer Confession, 249 Ill. 132, 136-137 (1911). The word "exclusively" when used in section 200/15-40 and other 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 (4<sup>th</sup> Dist. 1933).

Applicant's actual use determines whether the property in question is used for an exempt purpose. "Intention to use is not the equivalent of use." Skil Corp v. Korzen, 32 Ill. 2d 249, 252 (1965). However, exemptions have been allowed where property is in the actual process of development and adaptation for exempt use. Illinois Institute of Technology v. Skinner, 49 Ill. 2d 59 (1971); People ex rel. Pearsall v. Catholic Bishop, 311 Ill. 11 (1924). Adapting and developing a property for an eventual exempt use can be sufficient to satisfy the actual use requirement. Weslin Properties v. Department of Revenue, 157 Ill. App. 3d 580 (2nd Dist. 1987).

The Department's August 30, 2007, determination denying the instant exemption request was based solely on the Department's conclusion that the subject property was not in exempt use in 2006. Because the Department denied the exemption solely on lack of exempt use, it is implicit that the Department determined that St. Thomas owned the subject property and qualified as a "religion." These conclusions were unchallenged in the instant proceeding.

St. Thomas purchased the property by warranty deed on June 2, 2006. Tr. pp. 64-72; App. Ex. E, F, G, and H. The Syro Malabar Catholic Church, consisting of 100,000 congregants, is part of the Eastern Catholic Church, with congregants mainly from India who have migrated to the United States. The Church traces its origin to St. Thomas who came to India and established the Church. In 2001, Pope John Paul formed the St. Thomas Syro Malabar Catholic Diocese of Chicago, which is comprised of approximately 1,000 families. Tr. pp. 53-57; App. Ex. A. The Diocese was incorporated

on May 21, 2001 under the Illinois “Not-For Profit Corporation Act.” The Diocese is in good standing with the State of Illinois as of August, 2008. Tr. pp. 59-60; App. Ex. B. The Diocese is exempt from Illinois sales tax as of July 26, 2002. Tr. pp. 60-62; App. Ex. C. The Diocese is exempt from income tax under Section 501(c)(3) of the Internal Revenue Code. The Diocese is listed in “The Official Catholic Directory” for 2006. Tr. pp. 62-64; App. Ex. D. The intended use of the subject property is for a central office building for the Diocese. The subject property is within one mile of St. Thomas’ cathedral church. The Bishop and Vicars General, assistants to the Bishop, and St. Thomas’ Chancellor and Chief Financial Officer will have offices on the subject property. Ministries for family, youth and children will also be located on the subject property. Tr. pp. 64-66, 80.

The only real issue in this case is whether the subject property was actually and exclusively used for exempt purposes after June 2, 2006. Father Roy testified that St. Thomas’ congregants loaned the Diocese \$787,500, on a long-term basis interest-free, to purchase the subject property. Tr. pp. 87-90; App. Ex. V. On November 10, 2006, after the purchase of the property, the Bishop sent a letter to congregants requesting that they contribute one-week’s paycheck, if possible, or \$250 toward the purchase of both the subject property and a residence for the bishop, which is not at issue in this proceeding. Tr. pp. 82-84; App. Ex. W. There was no testimony at the hearing as to how much money was raised from the Bishop’s request.

On August 25, 2006, Mr. Nickola received a request from Father Roy to tour the subject property in order to prepare a proposal for architectural renovation of the property. Mr. Nickola toured the building on August 31, 2006 for 5 hours. He walked

through all four floors of the unoccupied building. After this tour, two architectural employees surveyed the building because no existing documentation of the building was available. On September 15, 2006, Mr. Nickola prepared a “Letter of Agreement for Schematic Architectural and Engineering Services for Determining Scope of Work” for the property located at 5544 St. Charles Road, in Berkely, Illinois. The “Letter of Agreement” was signed by Father Roy on December 7, 2006. Tr. pp. 14-16, 25-26; App. Ex. K and S. The Letter of Agreement detailed the work to be done in three phases. Phase one required studying the existing building architecturally. Phase two called for surveying the existing building mechanically to look at mechanical, electrical and plumbing systems. Phase three called for the production of an owner’s space use program for the Diocese’s anticipated use of the building and how this use would fit within the scheme of the building. Tr. pp. 14-15; App. Ex. K. There was no testimony at the hearing that any of the three phases had been accomplished in 2006, the year at issue in these proceedings.

Mr. Nickola found that the subject property was a 40 year old building that had a 40 year old mechanical system in need of revitalization or replacement. There was a rooftop air conditioner that no longer worked. The building’s electrical distribution system had some code violations. Tr. pp. 15-18. As a result of the tour by Mr. Nickola and the architectural employees, Mr. Nickola was able to provide St. Thomas with a “Preliminary Assessment of Potential Project Budget,” dated February 13, 2007. This Assessment estimated that the existing building could be remodeled for \$743,325, that an addition to the first floor would cost \$367,325, and that there would be additional costs for asphalt paving, concrete walks and curbs, landscaping and site lighting. Tr. pp. 19-

21; App. Ex. L. There was no testimony at the hearing as to whether St. Thomas had raised any of the funds needed for the remodeling, the addition to the first floor or the outside improvements.

Also as a result of the tour by Mr. Nickola and the architectural employees, Mr. Nickola was able to provide St. Thomas with “Chancery Building Remodeling” diagrams dated February 22, 2007, consisting of computer drawings of the four floors of the building, and floor plans showing the space usage requirements of the floors, including offices, reception and conference spaces. The space usage was determined after meeting with the Diocese. Tr. pp. 29-34; App. Ex. M. Mr. Nickola contacted the Building Director of the Village of Berkeley in the Fall of 2006. At that time, Mr. Nickola inquired from the Village as to whether the Diocese could occupy the second floor only, without bringing the other floors up to code. On May 2, 2007, Don Morris, Building Director for the Village of Berkeley, wrote Mr. Nickola detailing the applicable local and national building codes, and identified the numerous violations and prior citations of the building and what work would be required by St. Thomas before submitting a permit for building renovation and occupancy. Tr. pp. 41-46; App. Ex. P. There was no testimony at the hearing that St. Thomas had submitted a permit for building renovation and occupancy to the Village.

The only actual activity that took place on the subject property after its purchase was a tour by Mr. Nickola and a survey of the subject property by two architectural employees. The activities reflect a “mere intention to convert the property for an exempt use.” Weslin Properties, *supra*, at 586. However, intention to use is not the equivalent of use. Skil Corp. v. Korzen, 32 Ill. 2d 249, 252 (1965). Mr. Nickola “surmised” that “the

eventual budget requirements to remodel the building to gain occupancy were significantly higher than St. Thomas' expectations when they initially purchased the building..." Tr. p. 50. Father Roy testified that "we purchase[d] the property with the intention of moving into it immediately. Then it needed renovation. That's why it lasted so long. For the renovation, we had to raise money." Tr. p. 86. 35 ILCS 200/15-40 exempts property that is used for religious purposes. Unfortunately, there is no exemption in the Illinois statutes for property that is not being used because of unforeseen or unanticipated complications. Based on the testimony and evidence admitted, I am unable to conclude that the subject property was in the process of actual development and adaptation for exempt use in tax year 2006.

WHEREFORE, for the reasons stated above, it is recommended that the Department's determination which denied the exemption from 2006 real estate taxes on the grounds that the subject property was not in exempt use should be affirmed and Cook County Parcel identified by P.I.N. 15-07-210-024-0000 should not be exempt from property taxes in 2006.

ENTER:

December 4, 2008

Kenneth J. Galvin  
Administrative Law Judge