

PT 01-3

Tax Type: Property Tax
Issue: Religious Ownership/Use

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

LAKE COUNTY BAPTIST
TEMPLE OF WAUKEGAN,
APPLICANT

v.

ILLINOIS DEPARTMENT
OF REVENUE

No. 00-PT-0027
(99-49-0114)
(99-49-0093)
P.I.N.S: 08-05-208-017
08-05-208-004

RECOMMENDATION FOR DISPOSITION
PURSUANT TO APPLICANT’S MOTION FOR SUMMARY JUDGMENT

APPEARANCE: Mr. John Mauk of Mauk, Bellande, & Cheely on behalf of the Lake County Baptist Temple of Waukegan

SYNOPSIS: These consolidated matters come to be considered pursuant to applicant’s motion for summary judgment. Applicant filed this motion after the Illinois Department Of Revenue (hereinafter the “Department”) issued two separate determinations in these matters.

The first determination, issued February 17, 2000, found that real estate identified by Lake County Parcel Index Number 08-05-208-004 (hereinafter “parcel 004”) was not in exempt use, and therefore, did not qualify for exemption from 1999 real estate taxes under Section 15-40 of the Property Tax Code, 35 ILCS 200/1-1, *et seq* (hereinafter the “Code”).

The second determination, issued February 25, 2000, found that real estate identified by Lake County Parcel Index Number 08-05-208-017 (hereinafter “parcel 017”) was not in exempt use, and therefore, did not qualify for exemption from 1999 real estate taxes under Section 15-40 of the Code.

At issue herein is whether parcels 004 and 017 qualify for exemption for exemption from 1999 real estate taxes under 35 ILCS 200/15-40. The underlying controversies arise as follows:

Applicant filed two separate Applications for Property Tax Exemption, one pertaining to parcel 004, the other pertaining to parcel 017, with the Lake County Board of Review. The Board reviewed these applications and recommended to the Department that: (1) the requested exemption as to parcel 004 be denied *in toto*; but (2) the requested exemption as to parcel 017 be granted for part of the 1999 assessment year. The Department accepted the Board’s recommendation as to parcel 004, but rejected the Board’s recommendation as to parcel 017, issuing the aforementioned determinations.

Applicant filed a timely appeal as to these denials but then filed this motion for summary judgment. Following a careful review of that motion and its supporting documentation, I recommend that applicant’s motion for summary judgment on both parcels be denied.

FINDINGS OF FACT:

1. The Department’s jurisdiction over the case pertaining to parcel 004 and its position therein are established by the determination, issued by the Office of Local Government Services on February 17, 2000, finding that parcel 004 is not in exempt use.

2. The Department's jurisdiction over the case pertaining to parcel 017 and its position therein are established by the determination, issued by the Office of Local Government Services on February 25, 2000, finding that parcel 017 is not in exempt use.
3. Applicant is a Baptist congregation. Its main church complex, located in Waukegan, IL, is exempt from real estate taxation pursuant to the Departmental Determinations in Case Nos. 74-49-364, 77-49-38, and 86-49-210. Administrative Notice.¹
4. The Application for Property Tax Exemption, received by the Department on December 6, 1999, indicates that parcel 004 is located in the immediate vicinity of applicant's church complex, at 37841 N. Harper Ave, Beach Park, IL, and improved with a one story residential facility.
5. The Application for Property Tax Exemption, received by the Department on December 9, 1999, indicates that parcel 017 is also located in the immediate vicinity of applicant's church complex, located at 3721 N. Harper Ave, Beach Park, IL, and improved with a one story residential facility.
6. Applicant obtained ownership of parcel 004 by means of a warranty deed dated July 29, 1999. It obtained ownership of parcel 017 by means of a warranty deed dated March 1, 1999. Applicant Motion Ex. A, B.

1. The Departmental records pertaining to these exemptions have been expunged due to age. As such, the only available information pertaining thereto appears on the Applications for Property Tax Exemption applicant filed in connection with these matters.

7. The Parsonage/Convent Questionnaires applicant filed in connection with its Applications indicate that both parcels 004 and 017 were used for no purpose other than providing living quarters to unspecified individuals who were not required to live in the residences as conditions of their employment.
8. The Questionnaires further indicate that: (1) the individuals living in these residential facilities did not perform any duties that required them to live in close proximity to the church; and, (2) did not carry out any job-related duties in the residential facilities themselves.
9. Employment contracts applicant submitted in support of its motion for summary judgment indicate that applicant employed the persons living in these residential facilities as school teachers. Applicant Motion Ex. H, I, J, K.
10. The employment contracts also set forth the terms and conditions under which applicant employed these teachers. Such terms and conditions included, *inter alia*, that the teachers were required to: (1) submit a weekly lesson plan; (b) communicate with the parents or guardians of his/her students; (2) attend all chapel services in which his/her students are present; (3) attend school functions listed on the school calendar; (4) keep a class register; (5) make and submit such reports as may be required by the school administrator; (6) open and close the school building; (h) monitor the school grounds on a regular basis; (7) be available for after school tutoring as needed; and (8) faithfully attend, support and participate in the activities of applicant's church. *Id.*

CONCLUSIONS OF LAW:

Summary judgment is appropriate where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c). There are no contested facts in this case. Therefore, the issue for decision herein necessarily becomes one of law. Evangelical Alliance Mission v. Department of Revenue, 164 Ill. App.3d 431, 439 (2nd Dist. 1987). That issue is, precisely stated, whether the Department correctly determined that parcels 004 and 017 were not in exempt use, as required by Section 15-40 of the Property Tax Code, during the 1999 assessment year. For the following reasons, I conclude that the Departments determinations as to parcels 004 and 017 were correct as a matter of law:

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.

Pursuant to Constitutional authority, the General Assembly enacted the Property Tax Code 35 ILCS 200/1-1 *et seq.* (hereinafter the “Code”). The Code provisions that govern disposition of this case are found in 35 ILCS 200/15-40, which provides, in relevant part, for exemption of the following:

All property used exclusively for religious purposes, or used exclusively for school and religious purposes, or for orphanages and not leased or otherwise use with a view to a profit, is exempt, including all such property owned by churches or religious institutions or denominations and use in conjunction therewith as housing facilities provided for ministers ... performing the duties of the vocation as ministers at such churches or religious institutions or for such religious denominations... [.]

A parsonage ... 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.

35 ILCS 200/15-40.

It is well established that statutes conferring property tax exemptions are to be strictly construed so that all factual and legal inferences 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). Consequently, any doubts or debatable questions as to whether property falls within a given statutory exemption provision must be resolved in favor of taxation. *Id.*

In this case, the relevant statute requires that the properties in question be “used exclusively for religious purposes.” 35 ILCS 200/15-40. The word “exclusively” when used in Section 200/15-40 and other property tax exemption statutes means the “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). 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 specific “religious purposes” at issue herein are those of residential employees. Residences occupied by employees of religious organizations or other exempt entities cannot be exempted from real estate taxation absent appropriate proof that either: (1) the resident-employee (a) performs an exempt function, such as

educational or religious duties in the residence, *and*; (b) is required by those same exempt duties to live in the residence; or, (2) the resident-employee performs his/her duties in furtherance of the institution's exempt purpose *in the residential facility*. McKenzie v. Johnson, 98 Ill.2d 89, 98 (1983); 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). (emphasis added).

In this case, there exists a conflict between the written statements applicant made in the Parsonage/Convent Questionnaires that it submitted in connection with its initial exemption application and the job duties set forth in the contracts that it submitted in support of its motion for summary judgment. The former clearly indicated that the teachers who resided in the residential facilities located on parcels 004 and 017 were *not* required to live in such facilities as conditions of their employment with applicant. These documents further indicated that the teachers: (1) did not perform any duties which required that they live in close proximity to applicant's church complex; (2) used such facilities "for living quarters only[;]" (3) and, did not perform any job-related duties in these facilities.

The contracts, however, set forth a series of job duties, including, *inter alia*, opening and closing the school building, monitoring the school grounds on a regular basis, being available for after school tutoring as needed and faithfully attending, supporting and participating in the activities of applicant's church, from which one could

infer that the teachers were required to live in the residential facilities. However, applicant is not entitled to that inference as a matter of law. People ex rel. Nordland v. Home for the Aged, *supra*; Gas Research Institute v. Department of Revenue, *supra*.

More importantly, neither the contract nor any other documentation applicant submitted expressly requires, by formal rule or otherwise, that the teachers reside in the residential facilities. Lutheran Child and Family Services, *supra* at 426. Nor do these documents contain any indication that the teachers performed any “educational duties” within the confines of their respective residences. *Id.* at 425. Indeed, the Parsonage/Convent Questionnaires, filed by applicant, contained specific admissions that the teachers did *not* perform such duties in their respective residences. Under these circumstances, the most applicant has proven is that it provided these facilities as a convenience for the teachers.

Such convenience does not equate to the type of necessity required in the cases cited above. *See*, Lutheran Child and Family Services, *supra* at 426. Therefore, applicant is not entitled to have parcels 004 and 017 exempted from 1999 real estate taxes, under Section 15-40 of the Property Tax Code as a matter of law.

The case of St. John Evangelical Lutheran Congregation v. Board of Appeals, 357 Ill. 69 (1934), cited by applicant, does not alter any of the preceding conclusions. There, the court held in favor of exempting a residence occupied by a professor teaching at applicant’s parochial school on grounds that it was akin to a parsonage. St. John Evangelical Lutheran Congregation, *supra*, at 71. However, the statute in force at the time that case was decided did not specifically provide for the exemption of parsonages. Rather, it merely stated that “[a]ll 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” was exempt from real estate taxation. Revenue Act of 1872, Smith’s Stat. 1933, chap. 120, p. 2353.²

It is well settled that each tax year constitutes a separate cause of action for exemption purposes. People ex rel. Tomlin v. Illinois State Bar Ass’n, 89 Ill. App.3d 1005, 1013 (4th Dist. 1980); Jackson Park Yacht Club v. Department of Local Government Affairs, 93 Ill. App.3d 542 (1st Dist. 1981); Fairview Haven v. Department of Revenue, 153 Ill. App.3d 763 (4th Dist. 1987). As such, the issue of property tax exemption necessarily depends on the statutory provisions in force at the time for which the exemption is claimed. People ex rel. Bracher v. Salvation Army, 305 Ill. 545 (1922). This applicant seeks exemption from 1999 real estate taxes. Therefore, the applicable statutory provisions herein are those contained in the Property Tax Code, 35 ILCS 200/1-1, *et seq.*

Section 15-40 of the Property Tax Code specifically provides for the exemption of parsonages. That provision is also, for present purposes, interpreted according to the two-part test articulated in the line of decisions beginning with McKenzie v. Johnson, *supra*. Parcels 004 and 017 do not fall within the criteria set forth in that line of decisions for the reasons set forth above. Therefore, applicant’s motion for summary judgment should be denied on grounds that applicant is not entitled to have such parcels exempted from 1999 real estate taxes, under Section 15-40 of the Property Tax Code, as a matter of law.

WHEREFORE, for all the aforementioned reasons, it is my recommendation that real estate real estate identified by Lake County Parcel Index Number 08-05-208-004 and

2. Citation as it appears in the original text.

08-05-208-017 not be exempt from 1999 real estate taxes under Section 15-40 of the Property Tax Code, 35 **ILCS** 200/1-1, *et seq.*

January 23, 2001

Date

Alan I. Marcus
Administrative Law Judge