

PT 04-31
Tax Type: Property Tax
Issue: Religious Ownership/Use

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

**CHRIST THE SHEPHERD
LUTHERAN CHURCH,
APPLICANT**

v.

**ILLINOIS DEPARTMENT
OF REVENUE**

**No. 02-PT-0069
(01-47-0012)**
P.I.N: 02-11-400-006

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Mr. Ray A. Ferguson, of Berger, Ferguson & Associates on behalf of Christ the Shepherd Lutheran Church (the “Applicant”); Mr. Marc Muchin, Special Assistant Attorney General, on behalf of the Illinois Department of Revenue (the “Department”).

SYNOPSIS: This matter presents the issue of whether real estate identified by Kendall County Parcel Index Number 02-11-400-006 (the “subject property”), was “used exclusively for religious purposes,” as required by 35 ILCS 200/15-40 during the 2001 assessment year. The underlying controversy arises as follows:

The applicant filed an Application for Property Tax Exemption with the Kendall County Board of Review (the “Board”) on January 18, 2002. The Board reviewed this application and recommended to the Department that part of the

subject property be exempt.¹ On September 19, 2001, the Department issued its initial determination in this matter, which denied the requested exemption *in toto* on grounds of lack of exempt use.

The applicant filed a timely appeal to the Department's initial determination and later presented evidence at a formal evidentiary hearing, at which the Department also appeared. Following a careful review of the record made at hearing, I recommend that the Department's initial determination in this matter be affirmed.

FINDINGS OF FACT:

1. The Department's jurisdiction over this matter and its position therein are established by Dept Ex. Nos. 1, 2.
2. The Department's position in this matter is that the subject property is not in exempt use. Dept. Ex. No. 1.
3. The applicant, an affiliate of the Northern Illinois district of the Missouri Synod of the Lutheran Church, obtained ownership of the subject property on October 20, 1998. Dept. Ex. No. 1.
4. The subject property is located in Oswego, IL and improved with a 17,000 square foot building. Dept. Ex. No. 2.

1. The exact nature of this partial exemption is unclear, as the Board's recommendation, which appears on the Departmental Application form, was, *verbatim*, as follows:

RECOMMENDATION:

x Partial exemption for the following described portion of the property 15% for Non Church portion of the building.

Dept. Ex. No. 2.

5. A floor plan reveals that the building is divided into the following major areas:

Area	Dimensions	Square Footage	% of Building as a Whole
Multipurpose Room	70 x 70	4,900 sq. ft.	29%
First Classroom Area	60 x 100	6,000 sq. ft.	35%
Second Classroom Area	60 x 100	6,000 sq. ft.	35%

Applicant Ex. No. 1.

CONCLUSIONS 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 Section 15-40 of the Property Tax Code, 35 **ILCS** 200/1-1 *et seq.*, wherein “[a]ll property used exclusively² for religious purposes,³” is exempted from real estate taxation. 35 **ILCS** 200/15-40.⁴

Property tax exemptions are inherently injurious to public funds because they impose lost revenue costs on taxing bodies and the overall tax base. In order

2. 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).

3. 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).

4. An amendment to this provision, effective August 10, 2001, has no effect on the issue presented herein. *See*, Public Act 92-333.

to minimize the harmful effects of such lost revenue costs, and thereby preserve the Constitutional and statutory limitations that protect the tax base, statutes conferring property tax exemptions are to be strictly construed, with all doubts and evidentiary deficiencies 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). Moreover, it is the applicant that bears the burden of proving all elements of its exemption claim by a standard of clear and convincing evidence. *Id.*

The clear and convincing standard is met when the evidence is more than a preponderance but does not quite approach the degree of proof necessary to convict a person of a criminal offense. Bazydlo v. Volant, 264 Ill. App.3d 105, 108 (3rd Dist. 1994). Thus, “clear and convincing evidence is defined as the quantum of proof which leaves no reasonable doubt in the mind of the fact finder as to the veracity of the proposition in question.” In the Matter of Jones, 285 Ill. App.3d 8, 13 (3rd Dist. 1996); In re Israel, 278 Ill. App.3d 24, 35 (2nd Dist. 1996); In re the Estate of Weaver, 75 Ill. App.2d 227, 229 (4th Dist. 1966).

The level of proof this applicant submitted at hearing does not satisfy the clear and convincing standard for numerous reasons. First, the record fails to clearly prove that the applicant’s sole witness, Pastor Scott Snow, had sufficient personal knowledge of the purposes for which the applicant used the subject property during the tax year currently in question, 2001.

The Department objected to Pastor Snow’s lack of personal knowledge at hearing, ostensibly because Pastor Snow was not serving as the applicant’s pastor

throughout 2001. Tr. pp. 15, 23. Although the applicant was afforded the opportunity to cure this objection, it failed to clearly establish that Pastor Snow possessed sufficient personal knowledge of the uses that the applicant, itself, made of the subject property during 2001.

Pastor Snow testified that he oversaw some aspects of the applicant's operations by serving in the supervisory capacity of Congregational Services Executive for the Northern Illinois district of the Missouri Synod of the Lutheran Church in 2001. Tr. pp. 15-16. Pastor Snow further indicated that some of his testimony concerning use was based, in part, on personal observations that he made during his periodic supervisory visits to the subject property. Tr. pp. 16-17. However, Pastor Snow could not recall how many times he visited the subject property during 2001. Tr. p. 16. More importantly, Pastor Snow specifically admitted that parts of his testimony as to use were based on conversations that he had with the applicant's pastor and the director of the day care center that applicant operated at the subject property. Tr. pp. 15-16.

The record fails to disclose which parts of Pastor Snow's testimony were based on hearsay and which parts were based on personal observation. Consequently, the record is ultimately inconclusive as to whether Pastor Snow's testimony was based on an appropriate level of personal knowledge. This and all other inconclusive matters must be resolved against the applicant and in favor of taxation. People ex rel. Nordland v. Home for the Aged, supra; Gas Research Institute v. Department of Revenue, supra.

Even if I were to accept that all of Pastor Snow's testimony was based on appropriate personal knowledge, this record contains other evidentiary deficiencies that cause its exemption application to fail. First and foremost, the applicant failed to introduce any documentation to rectify Pastor Snow's otherwise inconclusive testimony concerning the actual extent to which the subject property was "exclusively" or primarily used for qualifying "religious" purposes during the 2001 assessment year. This testimony was, in relevant part, as follows:

Q. [On direct examination by applicant's counsel] And the religious activities as regular Sunday services that began on a regular, weekly basis, did that begin – when did that begin to the best of your knowledge?

A. [By Pastor Snow] In December I believe of 2001.

Q. But there were services of [a] religious nature being conducted there on an irregular basis frequently prior to that date?

A. Right. The December date would mean when the pastor was on-site doing worship services with the pastor. Otherwise, with the teachers and the child care director those are taking place prior to becoming a pastor. [sic].

Q. And would communion and all of the other religious activities officially been done in December when the pastor was there on a full-time basis?

A. That's correct.

Q. But that is not to say that there were no religious activities being done on a daily basis prior to the pastor being there?

A. That's correct.

Q. [On cross-examination by Department's counsel] Is December, 2001 when the pastor was on site for the first time?

A. No. That was when services began to be conducted. He was on-site and in the facility and in the area prior to that. During the year 2001, he was setting up his office. He was visiting in the neighborhood.

Tr. pp. 17, 18, 20.

The word “exclusively” when used in Section 200/15-40 and other property 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). Webster’s New World Dictionary of the American Language (2nd College Edition, 1980) defines the word “irregular” as meaning “uneven in occurrence or succession; variable or erratic.” It also defines the term “frequent” as meaning “occurring often; happening repeatedly at brief intervals; constant; habitual.”

These definitions have very different applications herein because the question of exempt use is decided by comparing the relative extent to which the subject property was used for taxable and tax exempt purposes during the tax year in question. Metropolitan Water Reclamation District of Greater Chicago v. Illinois Department of Revenue, 313 Ill.App.3d 463 (1st Dist. 2000), *leave to appeal denied*, October 4, 2000.

Property that is used for “religious” purposes on a “frequent” basis could qualify for exemption under Section 15-40, provided that the applicant submits documentation establishing an independent factual basis for what is otherwise an unacceptably conclusory statement. In contrast, it is all but factually impossible for property that is used for “religious” purposes only on an “irregular” basis to

qualify for exemption under Section 15-40 because the word “irregular” connotes incidental use.

Pastor Snow’s contradictory testimony, which indicated that the subject property was used for “religious” purposes on *both* an “irregular” and “frequent” basis prior to December, 2001 (Tr. p. 17), leaves me unable to make the appropriate comparison. This is especially true where, as here, the record lacks any documentation, such as programs or announcements, demonstrating what specific “religious” services applicant held at the subject property and the frequency with which it actually held any such services at this property.

Without this type of documentary evidence, the record simply does not provide me with any objective means of evaluating the true extent to which the applicant actually used the subject property for qualifying purposes. Nor does it allow me to accurately evaluate whether or not the conflict in Pastor Snow’s testimony was attributable to an inadvertent misstatement. Therefore, that crucial conflict must stand as another indicator that the applicant has failed to sustain its burden of proof.

Pastor Snow’s testimony does nevertheless raise the possibility that the applicant might have begun to use the subject property “exclusively” for “religious purposes” in December of 2001. However, the record once again lacks evidence on a crucial point, as it does not precisely identify the exact date in December of 2001 when the applicant, in fact, commenced that “exclusive” use. Thus, for all the above reasons, the overall conclusion I must reach is that

the applicant failed to prove that the subject property was “exclusively” used for qualifying purposes at any point during the 2001 assessment year.

The floor plan submitted as Applicant Ex. No. 1 does not alter this conclusion. This floor plan demonstrates that the building improvement situated on the subject property is divided into three major usage areas, a multipurpose room and two separate classroom areas. It also provides dimensions for each of these major usage areas.

The floor plan does not, however, contain any dimensions for any of the space situated within the major usage areas. Absent such dimensions, the part of Pastor Snow’s testimony indicating that the office of the applicant’s pastor is situated within the multipurpose area (Tr. pp. 13-14) is unacceptably conclusory because it does not specifically identify the tangible, physical space that the applicant alleges is in exempt use. Illinois Institute of Technology v. Skinner, 49 Ill. 2d 59, 64 (1971).

The same is true with respect to the evidence relative to the day care center, which was also deficient in other respects. No one who actually worked at the day care center on a day-to-day basis testified at the hearing. Thus, while Pastor Snow’s supervisory responsibilities did require him to make periodic visits to the day care center, his personal knowledge of its daily operations is suspect at best.

Furthermore, the applicant did not submit any financial statements or other documentation establishing necessary specifics of those daily operations, including the day care center’s financial structure, its census for the tax year in

question, its fee structure for that tax year and any written policy it might have had in force with respect to waiving fees for those who are unable to pay.

The letter introduced as Department Ex. 3, does contain some information about the day care center's daily operations. However, the letter, which is dated November 8, 2002, does not make any specific reference to the manner in which any aspect of those operations were carried out during the tax year currently in question, 2001. Because 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)), this letter cannot be considered relevant or probative of the issue currently in dispute unless it contains information pertaining to that specific tax year.

More importantly, all of the information that the letter does contain, such as that the day care center's operations are "controlled by a board that is comprised of four pastors and additional lay members from sponsoring churches ...[,]" is unacceptably conclusory and self-serving in the absence of the underlying documents or business records (i.e. articles of incorporation, financial statements, etc.) which provide the actual substantiation for the statements being made. Because the record does not contain any of these underlying documents or business records, it fails to prove that the day care center is in exempt use.

In summary, the "religious purposes" exemption contained in Section 15-40 of the Property Tax Code is only available to entities that prove, by a standard of clear and convincing evidence, that the property they are seeking to exempt is "exclusively" or primarily used for qualifying "religious" purposes. 35 **ILCS**

200/15-40; Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue,
243 Ill. App.3d 186 (4th Dist. 1993).

The level of proof that this applicant submitted at hearing does not satisfy the clear and convincing standard for the reasons set forth above. Any other conclusion would, on this particular record, enable this applicant or any other entity to obtain a property tax exemption, and thereby visit deleterious lost revenue costs on public treasuries, simply by presenting nothing more than testimony that, irrespective of credibility, does nothing more than serve its own interest. This, in turn, would effectively relax the evidentiary standards in property tax cases to levels well below those required by state constitutional mandate in the first instance and below what is necessary to protect public treasuries from unwarranted lost revenue costs, in the second. Therefore, the Department's initial determination in this matter should be affirmed.

WHEREFORE, for all the aforementioned reasons, it is my recommendation that the of real estate identified by Kendall County Parcel Index Number 02-11-400-006 not be exempt from 2001 real estate taxes under 35 ILCS 200/15-40.

Date: 9/9/2004

Alan I. Marcus
Administrative Law Judge