

PT 04-46

Tax Type: Property Tax

Issue: Religious Ownership/Use

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

OSWEGO PRESBYTERIAN CHURCH,

APPLICANT

v.

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

03-PT-0074

Real Estate Tax Exemption

**For 2002 Tax Year
P.I.N. 03-08-453-001**

Kendall County Parcel

**Kenneth J. Galvin
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Oswego Presbyterian Church appearing *pro se*; Mr. Marc Muchin, Special Assistant Attorney General, appearing on behalf of the Department of Revenue of the State of Illinois.

SYNOPSIS:

This proceeding raises the issue of whether the subject property, identified by Kendall County Parcel Index Number 03-08-453-001 (hereinafter the “subject property”) qualifies for exemption from 2002 real estate taxes under 35 ILCS 200/15-40, which exempts “[a]ll property used exclusively for religious purposes” and not leased or used for profit.

The controversy arises as follows: On January 3, 2002, Oswego Presbyterian Church (hereinafter “Oswego” or the “Church”) filed a Real Estate Exemption Complaint

for the subject property with the Board of Appeals/Board of Review of Kendall County (hereinafter the “Board”). Dept. Ex. No. 2. The Board reviewed Oswego’s complaint and subsequently recommended to the Illinois Department of Revenue (hereinafter the “Department”) that the subject property be granted a full year exemption for tax year 2002.

On September 18, 2003, the Department rejected the Board’s determination finding that the subject property was not in exempt use in 2002. Dept. Ex. No. 1. On October 8, 2003, Oswego filed a timely request for a hearing as to the denial and presented evidence at a formal hearing on July 29, 2004, with Mr. John Arendt, Corporate Secretary, and Ms. Deb Krase, Church Treasurer, providing oral testimony. Following submission of all evidence and a careful review of the record, it is recommended that the subject property be granted an exemption for the 2002 tax year.

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 in tax year 2002. Tr. pp. 11-12; Dept. Ex. Nos. 1 and 2.
2. Oswego is affiliated with the Blackhawk Presbyterian, under the synod of Lincoln Trails. Oswego has approximately 600 members. Tr. pp. 69, 75-76.
3. Oswego acquired the subject property in December, 2001. Oswego’s “House and Grounds Committee” and Church youth, under the direction of the Committee, renovated the property and arranged for the purchase of new appliances. Renovation work included painting the house on the subject property both inside and out, replacing the front door which had become warped, replacing the carpeting, tearing

down a storage shed and building a new shed in the rear of the subject property and yard work. Approximately 6 Committee members and 50 Church youth worked on the subject property. The renovations cost approximately \$20,000 Tr. pp. 26-29, 38-39, 44-45, 53, 58-59, 61.

4. In tax year 2002, supplies, including banners and posters for display boards for Oswego's Sunday school, were stored in the shed and garage on the subject property. Oswego's puppet ministry stored their screens and props in the house on the subject property. Christmas decorations, including trees, wreathes and lights, were also stored in the house. Tr. pp. 39-44, 57-58.
5. Beginning in July and August of 2002, "Stephen's Ministers," a church group that visited parishioners with special needs met once a month in the house on the subject property. A Bible study group of retired men met once a week in the house. The senior high youth group met in the house to plan their mission trips and for Bible study, praise and worship service. Tr. pp. 55-56, 63-65.
6. At the time the subject property was purchased, Oswego did not have a youth minister, but was actively seeking one. Tr. pp. 29-30, 72-73.
7. Oswego hired a youth minister on June 2, 2003 with employment to start on July 13, 2003. An "Addendum to Contract for Director of Youth/Christian Education" dated July 14, 2003, states that "Employee must be required to accept the lodging [on the subject property] as a condition of employment." Tr. pp. 32-34, 44; Dept. Ex. No. 4.

CONCLUSIONS OF LAW:

An examination of the record establishes that Oswego has demonstrated, by the presentation of testimony, exhibits and argument, evidence sufficient to warrant

exempting P.I.N. 03-08-453-001 for the 2002 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 (1st Dist. 1983).

In accordance with its constitutional authority, the General Assembly enacted the Property Tax Code. 35 ILCS 200/1-3 *et seq.* The provisions of that statute which govern the disposition of the instant proceeding are found in Section 200/15-40, which states as follows:

All property used exclusively for religious purposes, or used exclusively for schools 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.

The above statute allows an exemption for property used exclusively for religious purposes. Benedictine Sisters of the Sacred Heart v. Department of Revenue, 155 Ill. App. 3d 325 (2d Dist. 1987). Property satisfies the exclusive-use requirement of the property tax exemption statutes if it is primarily used for the exempted purpose, even though it may also be used for a secular or incidental purpose. McKenzie v. Johnson, 98 Ill.2d 87, 98 (1983).

The Church'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 (2d Dist. 1987).

The Department's determination of September 18, 2003 denying the exemption request was based solely on the Department's conclusion that the property was not in

exempt use in 2002. Because the Department denied the exemption solely on lack of exempt use, it is implicit that the Department determined that Oswego owned the subject property and qualified as a “religion.” These conclusions were unchallenged in the instant proceeding. Oswego, a congregation of 600 members, is affiliated with the Blackhawk Presbyterian, under the synod of Lincoln Trails. Tr. pp. 69, 75-76. Testimony at the hearing was that the subject property was purchased in December, 2001. Tr. p. 26. Accordingly, the only real issue is whether the subject property was actually and exclusively used for religious purposes in 2002.

At the time that the subject property was purchased, Oswego did not have a youth minister. The search for a youth minister had been underway for several months prior to the purchase of the property and it was “just a matter of finding the right candidate.” Tr. pp. 29-30. Oswego’s purchased the subject property with the intention that whoever was hired as youth minister would live in the house on the property. Tr. p. 52. The House and Grounds Committee intended to have the house ready to be lived in by March of 2003. Tr. p. 54.

At the time that the “Parsonage Questionnaire” was completed on December 21, 2002, the house on the property “was not livable” and had to be “put into shape to be livable when a youth minister was hired.” Tr. p. 30. The Questionnaire stated that “[F]uture use could include as a parsonage for Christian Ed. Director.” The Church responded “No” in the Questionnaire to the question of whether the minister was required, as a condition of employment, to reside in the residence and the Church responded “None” to the question of what duties, if any, required the minister to live in close proximity to the church. Dept. Ex. No. 3. The responses of “No” and “None”

would appear to be appropriate in light of the fact that a youth minister had not been hired at the time that the Questionnaire was completed and the exemption was applied for. The Department apparently denied the exemption for 2002 based on the responses to the questions asked in the Questionnaire.

After the subject property was purchased, Oswego's House and Grounds Committee, and Church youth under the direction of the House and Grounds Committee, renovated the property and arranged for the purchase of new appliances. Renovation work included painting inside and outside, yard work, replacing the front door which had become warped, replacing the carpeting, and tearing down a storage shed and building a new shed in the rear of the subject property. Approximately 50 Church youth and 6 Committee members worked on the subject property. The renovations cost approximately \$20,000. Tr. pp. 26-29, 38-39, 44-45, 53, 58-59, 61.

In 2002, supplies, including banners and posters for display boards for Oswego's Sunday school, were stored in the shed and garage on the subject property. Oswego's puppet ministry stored their screens and props in the house on the subject property. Christmas decorations, including trees, wreathes and lights, were also stored in the house. Tr. pp. 39-44, 57-58. A Bible study group of retired men met once a week in the house. Additionally, the senior high youth group met in the house to plan their mission trips and for Bible study, praise and worship service. Beginning in July and August of 2002, "Stephen's Ministers," a church group that visited parishioners with special needs, met once a month in the house on the subject property. Tr. pp. 55-56, 63-65. The "Parsonage Questionnaire" completed December 21, 2002, stated that the residence on the subject property was currently being used for small group ministry (living room and kitchen) and

for storage of church owned property (bedrooms and garage). Dept. Ex. No. 3. Ms. Krase testified that the house was cleaned up for meeting space before it was “ready for habitat.” “Meeting space would be a whole lot different from asking somebody to live in the space.” Tr. p. 63.

Based on the evidence and testimony presented at the evidentiary hearing, I conclude that the subject property should be exempt from real estate taxes for the entire 2002 tax year. The renovation of the subject property, which began immediately after purchase, indicates that Oswego had gone beyond the mere intention of converting the property and was in the actual process of developing and adapting the property for exempt use as a future home for the youth minister. Weslin Properties v. Department of Revenue, 157 Ill. App. 3d 580 (2d Dist. 1987). Oswego hired a Youth Minister on June 2, 2003 with employment starting on July 13, 2003. An “Addendum to Contract for Director of Youth/Christian Education” dated July 14, 2003, states that “Employee must be required to accept the lodging [on the subject property] as a condition of employment.” Tr. pp. 32-34, 44; Dept. Ex. No. 4.

While Oswego was in the process of developing and adapting the subject property for exempt use as a parsonage, the Church used the property for religious purposes. 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), (hereinafter “McCullough”). Oswego’s Bible study group met once a week in the house on the

subject property. The senior high youth group met in the house to plan their mission trips and for Bible study, praise and worship service. “Stephens’s Ministers,” a church group that visits parishioners with special needs, met on the subject property once a month. “Religious use” as defined by McCullough would include Oswego’s activities on the subject property. Ms. Krase testified that no monetary compensation was received for use of the property. Tr. p. 58.

The question of whether storage areas are exempt from taxation must be based on the standard set forth in MacMurray College v. Wright, 38 Ill. 2d 272 (1967) where the court stated that an “exemption will be sustained if it is established that the property is primarily used for purposes which are reasonably necessary for the accomplishment and fulfillment of the [religious] objectives, or the efficient administration of the particular institution.” Ms. Krase testified that the storage space in the basement of the Church building was overflowing and more room was needed. Tr. p. 68. The storage area in the church was a 15 by 20 foot room with most of the basement taken up by Sunday school classrooms. Tr. p. 70. In the house and shed on the subject property, Oswego stored materials used in its Sunday school, its puppet ministry and Christmas decorations. I conclude that these materials were necessary for the accomplishment of the Church’s religious objectives and for the efficient administration of the Church.

WHEREFORE, for the reasons stated above, I recommend that Kendall County Parcel, identified by P.I.N. 03-08-453-001, be exempt from property taxes for the 2002

tax year during which the subject property was both in the process of development and adaptation for religious use as a parsonage and being used for religious purposes.

October 5, 2004

Kenneth J. Galvin
Administrative Law Judge