

**PT 10-07**

**Tax Type: Property Tax**

**Issue: Religious Ownership/Use**

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

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

v.

**GRACE PRAYER SANCTUARY**

**Applicant**

**Docket # 09-PT-0025**

**Tax Year 2008**

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**RECOMMENDATION FOR DISPOSITION**

Appearances: Matthew Crain, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Terry Lynn Schuchman, *pro se*, for Grace Prayer Sanctuary

Synopsis:

Grace Prayer Sanctuary (“applicant” or “GPS”) filed an application for a property tax exemption for the year 2008 for a parcel of property located in St. Clair County. The applicant alleges that the property qualifies for an exemption under section 15-40 of the Property Tax Code (35 ILCS 200/1-1 *et seq.*) on the basis that it is used exclusively for religious purposes and not used with a view to profit. The St. Clair County Board of Review (“County”) recommended that the property receive a partial exemption from April 10, 2008 through December 31, 2008, and the Department of Revenue

("Department") disagreed with that decision. The Department determined that the property is neither owned nor used exclusively for religious purposes. The applicant timely protested the Department's decision to deny the exemption, and an evidentiary hearing was held. After reviewing the record, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. On April 10, 2008, Terry Lynn Schuchman acquired property located at 417 Lake Christine Drive in Belleville, Illinois. (Dept. Ex. #1)
2. The property is located in a residential subdivision known as Lake Christine Estates. The residence on the property has approximately 3,942 square feet. The property has an in-ground pool and overlooks a golf course. (Dept. Ex. #5, #6, pp. 25-26; Tr. pp. 19-20)
3. The property is subject to the Lake Christine Estates Restrictions Indenture ("Restrictions Indenture"), which includes the following provisions:

9. Uses of Premises. There shall be no business, either retail or wholesale, located on, or conducted out of, any lot or building thereon, though a casual, intermittent and irregular professional business may be conducted out of the residence, provided no sign advertising same is located on a lot or any portion thereof.

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13. Signs. No sign of any kind shall be displayed to the public eye on any lot except:

- A. One sign of not more than 3 Feet on a side, the purpose of which shall be to advertise a premises for sale or rent, and
- B. Signs used by a builder to advertise the premises during the construction and sale period, and

C. Any size or type of signs the undersigned Trustee or agents of the undersigned Trustee, with the Trustee's permission, may choose to erect, for the purpose of advertising the sale of lots and/or structures in said Subdivision.

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15. Land Use. All lots in the Subdivision, with the exception of the dam, shall be used exclusively for one-family, residential purposes. (Dept. Ex. #5, p. 3)

4. The applicant is affiliated with The Missionary Church International, Inc. ("TMCI") and has a ministry charter from TMCI.<sup>1</sup> (Dept. Ex. #6, pp. 42, 50; App. Ex. #1)
5. For federal tax exemption purposes, TMCI is the parent church and has a group exemption letter from the IRS that recognizes TMCI's subordinates as exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code. The applicant is one of TMCI's subordinates with a group exemption number. (App. Ex. #3; Dept. Ex. #6, p. 23)
6. The applicant is exempt from retailers' occupation taxes and use taxes pursuant to a determination made by the Department on August 3, 2007. (Dept. Ex. #6, p. 24)
7. For the year 2008, Terry Lynn Schuchman had a Certificate of Ordination from TMCI that gives her authority to act as a minister. (App. Ex. #2; Tr. p. 10)

#### CONCLUSIONS OF LAW:

It is well-established under Illinois law that taxation is the rule, and tax exemption is the exception. Eden Retirement Center, Inc. v. Department of Revenue, 213 Ill. 2d 273, 285 (2004). "[A]ll property is subject to taxation, unless exempt by statute, in

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<sup>1</sup> The bylaws for GPS indicate that GPS is affiliated with TMCI, but separate articles of incorporation for GPS were not provided.

conformity with the constitutional provisions relating thereto.” *Id.* Statutes granting tax exemptions must be strictly construed in favor of taxation. *Id.* at 288; Chicago Patrolmen’s Association v. Department of Revenue, 171 Ill. 2d 263, 271 (1996); People ex rel. County Collector v. Hopedale Medical Foundation, 46 Ill. 2d 450, 462 (1970). All facts are to be construed and all debatable questions resolved in favor of taxation. Eden Retirement Center, Inc., at 289. Every presumption is against the intention of the State to exempt the property from taxation. Oasis, Midwest Center for Human Potential v. Rosewell, 55 Ill. App. 3d 851, 856 (1<sup>st</sup> Dist. 1977). Whenever doubt arises, it must be resolved in favor of requiring the tax to be paid. Quad Cities Open, Inc. v. City of Silvis, 208 Ill. 2d 498, 508 (2004).

The burden of proof is on the party who seeks to qualify its property for an exemption. Eden Retirement Center, Inc., *supra*; Chicago Patrolmen’s Association, *supra*. The burden is a heavy one. Oasis, Midwest Center for Human Potential, *supra*. The party claiming the exemption bears the burden of proving by clear and convincing evidence that the property in question falls within both the constitutional authorization and the terms of the statute under which the exemption is claimed. Eden Retirement Center, Inc., *supra*; Board of Certified Safety Professionals of the Americas, Inc. v. Johnson, 112 Ill. 2d 542, 547 (1986) (citing Coyne Electrical School v. Paschen, 12 Ill. 2d 387, 390 (1957)).

Authority to grant property tax exemptions emanates from article IX, section 6 of the Illinois Constitution of 1970. Section 6 authorizes the General Assembly to exempt certain property from taxes and 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. Ill. Const. 1970, art. IX, §6.

The constitution does not require the legislature to exempt property from taxation; an exemption exists only when the legislature chooses to create one by enacting a law. Eden Retirement Center, Inc., at 290. “The legislature cannot add to or broaden the exemptions that section 6 of article IX specifies.” *Id.* at 286. By enacting an exemption statute, the legislature may place restrictions, limitations, and conditions on an exemption, but the legislature cannot make the exemption broader than the provisions of the constitution. *Id.* at 291.

Pursuant to the constitutional authority, the General Assembly enacted section 15-40 of the Property Tax Code, which allows exemptions for religious purposes and provides, in part, as follows:

(a) Property used exclusively for:

- (1) religious purposes, or
  - (2) school and religious purposes, or
  - (3) orphanages
- qualifies for exemption as long as it is not used with a view to profit.

(b) Property that is owned by

- (1) churches or
- (2) religious institutions or
- (3) religious denominations

and that is 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, including the convents and monasteries where persons engaged in religious activities reside also qualifies for exemption.

A parsonage, convent or monastery or other housing facility shall be considered under this Section to be exclusively used for religious purposes when the persons who perform religious related activities shall, as a condition of their employment or association, reside in the facility. ... 35 ILCS 200/15-40.

The term “exclusively” refers to the primary purpose for which the property is used. McKenzie v. Johnson, 98 Ill. 2d 87, 98 (1983).

In order to qualify for the exemption under subsection (a) of section 15-40, the property must be used exclusively for religious purposes and not used with a view to profit. This subsection does not require the property to be owned by a religious organization. Ownership is relevant, however, with respect to subsection (b) of section 15-40. During Ms. Schuchman’s testimony, she stated that the property “was clearly purchased by the church.” (Tr. p. 31). The Department disagrees that the property was purchased by the church and argues that because the property is not owned by the church, it does not qualify for an exemption under subsection (b). The ownership of the property, therefore, will be addressed.

The application for the exemption shows that the owner of the property is “Terry Lynn Schuchman, Trustee Grace Prayer Sanctuary.” (Dept. Ex. #1) By indicating that the owner is a trustee of GPS, the applicant apparently wanted to give the impression that Ms. Schuchman owns the property on behalf of GPS. The deed for the property, however, shows only “Terry Schuchman” as the owner. (Dept. Ex. #6, p. 27) The deed does not in any way indicate that GPS is the owner of the property.<sup>2</sup> Ms. Schuchman indicated that the seller of the property would not proceed with the sale unless the property was titled in Ms. Schuchman’s name rather than the applicant’s name. (Tr. p. 30) This, however, does not change the fact that the church does not own the property. The applicant’s contention that the property “was clearly purchased by the church” is not

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<sup>2</sup> Other documents relating to the sale, such as the Homeowners Association Certification and the Tax Proration Agreement, also show only Terry Schuchman as the owner of the property, not GPS. (Dept. Ex. #6, pp. 32-36)

supported by the record. Because the property is not owned by GPS, the property does not qualify for an exemption under subsection (b) of section 15-40.

With respect to subsection (a) of section 15-40, the applicant argues that the property qualifies under this subsection because it is used exclusively for religious purposes and not with a view to profit. On the day of the hearing, the applicant filed a Motion for Summary Judgment (“MSJ”) in which it argued that it is a special charter church and is part of a group of churches, TMCI. The motion states that Ms. Schuchman has a license to preach from TMCI for the year 2008, and the property is used as a house of prayer, which the applicant believes is an “allowable nonconforming use” of the property pursuant to the Restrictions Indenture. (MSJ p. 1) The applicant also contends that the use of the property is allowed under the Restrictions Indenture because it is a “casual, intermittent, and irregular professional business.” (MSJ p. 2, fn. 3) The applicant asserts that according to the New Testament, a church should be in a neighborhood and attempt to bring salvation to everyone in the area. (Tr. p. 28) The applicant also states that the County recommended that the property be exempt, and the property “is in the actual process of development and adaptation for exempt use.” (MSJ p. 2) The applicant contends that the property is being rehabilitated for exclusively religious purposes.

Notwithstanding the applicant’s averments, the evidence fails to show that during 2008 the property was used exclusively for religious purposes and not used with a view to profit. The applicant’s alleged or expected use of the property conflicts with the Restrictions Indenture and is not exclusively religious. The Restrictions Indenture states that “[a]ll lots in the Subdivision, with the exception of the dam, shall be used exclusively

for one-family, residential purposes.” The applicant contends that it does not violate this section because it is “one family of God.” (Tr. p. 24) It contends that it is a “house church” and all its members are “brothers and sisters.” *Id.* The Restrictions Indenture, however, requires the property to be used exclusively for one-family *residential* purposes. The applicant’s family of God is not residing at this home. Rather, Ms. Schuchman testified that her son, Thomas L. Schuchman, resides in the home in order to maintain it.<sup>3</sup> (Tr. p. 24)

For exemption purposes, the term “exclusively” refers to the primary purpose for which the property is used. McKenzie, *supra*. Property may have more than one use at any given time, but the exemption is determined based on the primary use and not on any secondary or incidental use. People ex rel. Marsters v. Missionaries, 409 Ill. 370, 375 (1951). If the property in the present case was used exclusively for *residential* purposes, as required by the Restrictions Indenture, then it was not used exclusively for *religious* purposes as a church. The property cannot have more than one exclusive use. If Thomas Schuchman was residing in the home during 2008, then the property was being used primarily for residential purposes, which is a secular purpose that disqualifies the property for an exemption.

The Restrictions Indenture also states that there shall be no business conducted on the property, with the exception of “a casual, intermittent and irregular professional business,” and no sign advertising the business is allowed. The applicant believes that this clause authorizes the exempt use of the property for religious purposes. If the property was only used on a “casual, intermittent, and irregular” basis for religious

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<sup>3</sup> Ms. Schuchman testified that Thomas Schuchman is taking care of the property “because we don’t want any damage.” (Tr. p. 24) She said he is a disabled veteran who cuts the grass and maintains the property. *Id.*

purposes, then the property was not used *primarily* for religious purposes. An occasional or sporadic religious use does not constitute the primary use of the property.<sup>4</sup>

Notwithstanding the fact that the alleged use would violate the Restrictions Indenture, the record only includes general statements concerning the actual use of the property during 2008, and no documentary evidence was provided to support the claim that the property was used for religious purposes. Although Thomas Schuchman uses this property as his personal residence, Ms. Schuchman testified that the property was “not in complete use” because it was still in the process of being rehabilitated. (Tr. p. 15) She said that in 2008 it was “definitely still under reconstruction.” (Tr. p. 16) The alleged reconstruction involved “mold issues,” “[p]lumbing,” and “[e]lectrical.” (Tr. p. 18) She also said the applicant is putting in a prayer garden. *Id.* Other than this testimony, however, the record does not include any evidence to support a finding that the property was under reconstruction. The few photographs of the property that were provided show a completed residence. (Dept. Ex. #6, p. 26)

Despite the alleged rehabilitation, the record includes a few references to religious use during 2008. The applicant does not have services for a congregation, but it has “special prayer meetings” and a “love feast” on Sundays. (Tr. p. 18) The applicant contends that the whole property is an adoration chapel (tr. p. 16), and it has prayer on the property “24/7” and “prayers on call.” (Tr. p. 28) There was no corroborating evidence, such as newsletters or bulletins, to support the alleged religious activity. Nevertheless, even if these prayers occurred on the property, a property tax exemption would not be

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<sup>4</sup> In response to a question asking whether there are any signs indicating that GPS is located on the property, Ms. Schuchman testified that the applicant has a “plaque” indicating the property is a house of prayer, but the plaque has not yet been put up on the property. (Tr. p. 17) She said the plaque would be “acceptable under the code.” *Id.* Any sign notifying the public that it is a house of prayer, however, would be another violation of the Restrictions Indenture.

warranted. The property is primarily used as a personal residence, and people of many faiths say prayers in their homes on a regular basis. Allowing an exemption when prayer occurs in a personal residence would call for an extraordinarily liberal interpretation of the religious exemption statute and would be contrary to the requirement to strictly construe the statute in favor of taxation. The legislature certainly did not intend to exempt residences where such activities take place.

Furthermore, the applicant has failed to establish that the property is not used with a view to profit. Although financial statements or a list of expenses for GPS were not provided, Ms. Schuchman's affidavit that was submitted with the application states that when the property was purchased, the applicant paid the earnest money and closing costs; the applicant also allegedly has been making the mortgage payments.<sup>5</sup> (Dept. Ex. #4, pp. 2-3) If the applicant actually did pay these expenses, then Ms. Schuchman would have personally profited because she is the one who owns the property, not the applicant.

As stated previously, exemption provisions are strictly construed, and all debatable questions must be resolved in favor of taxation. Eden Retirement Center, Inc., *supra*. The evidence presented by the applicant raises much doubt concerning the religious use of the property and whether it was used with a view to profit. Because the applicant has failed to clearly and convincingly show that the property meets the statutory requirements, the exemption must be denied.

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<sup>5</sup> Ms. Schuchman testified that the applicant must file monthly reports, including financial reports, with TMCI, but the reports were not offered into evidence. (Tr. p. 25)

Recommendation:

For the foregoing reasons, it is recommended that the applicant's Motion for Summary Judgment and its request for an exemption be denied.

Linda Olivero  
Administrative Law Judge

Enter: May 26, 2010