

PT 95-22
Tax Type: PROPERTY TAX
Issue: Religious Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
ADMINISTRATIVE HEARINGS DIVISION
SPRINGFIELD, ILLINOIS

IMMANUEL LUTHERAN CHURCH)
OF SPRINGFIELD)
Applicant) Docket # 93-84-57
) Parcel Index # 14-22-301-018
v.)
) Barbara S. Rowe
THE DEPARTMENT OF REVENUE) Administrative Law Judge
OF THE STATE OF ILLINOIS)
)

RECOMMENDATION FOR DISPOSITION

SYNOPSIS: The Sangamon County Board of Review/Appeals filed an Application for Property Tax Exemption with the Illinois Department of Revenue (the Department) for Immanuel Lutheran Church of Springfield (the applicant).

The Department denied the application finding that the property was not in exempt use. The applicant filed a protest to the findings of the Department and requested a hearing in the matter. A hearing was held pursuant to the request and it is recommended that the Director of the Department find that the parcel herein question was not in exempt use for the 1993 taxable year.

FINDINGS OF FACT:

1. The Department's position in this matter, namely that Sangamon County parcel index number 14-22-301-018 was not in exempt use for the 1993 assessment year, was established by admission into evidence of Department's Exhibits 1 through 5.

2. On November 29, 1993, the Sangamon County Board of Review/Appeals recommended a partial year exemption for the parcel herein question from

February 22, 1993 to September 1, 1993. The Sangamon County Board of Review/Appeals sent the Religious Application for Property Tax Exemption To Board of Review/Appeals - Statement of Facts to the Department where it was received January 21, 1994 (Department's Exhibit 1).

3. On August 18, 1994, the Department denied the exemption finding:

THE PRIMARY USE OF THE PROPERTY IS NOT RELIGIOUS.

THE PROPERTY IS NOT IN EXEMPT USE.

PRIMARY USE OF PROPERTY WAS NOT FOR RELIGIOUS USES. INTENT OF PROPERTY WAS FOR IT TO BE SOLD (Department's Exhibit 2).

4. On August 30, 1994, the applicant timely filed a protest to the decision of the Department requesting a hearing (Department's Exhibit 3).

5. On October 20, 1994, the Department contacted the applicant stating that a hearing had been scheduled for November 15, 1994 at the Willard Ice Building in Springfield, Illinois. The hearing was held pursuant to the notice (Department's Exhibit 4).

6. The applicant initially purchased the parcel here in question on November 17, 1989 (Department's Exhibit 1 at 4).

7. The transaction was done pursuant to a resolution of the church to purchase a house for the Church Worker who had been called to serve the church (Transcript (Tr.) 7, Applicant's Exhibit 1).

8. The applicant executed a Contract for Deed with the church lay worker and his wife, Brian L. and Cynthia A. Jensen, on November 17, 1989. The Contract for Deed stated that the Jensens, as the buyers, would pay the applicant, as seller, installments of \$335.00 per month for the residence for total payments of \$43,500.00. The contract obligated the buyers, the Jensens, to pay the taxes (Applicant's Exhibit 2).

9. Applicant felt that by making the church workers responsible for the taxes that they were encouraging them to be good citizens of the city and state (Tr. 10).

10. Mr. Jensen received the divine call to a sister congregation in

August of 1990 and accepted it. That action left the applicant again with the residence (Tr. 7).

11. At that time, the applicant had called in Mr. Hamrick as a Christian day school teacher and principal. A similar agreement and contract for deed were executed between the applicant and the Hamrick family. The Hamricks had installment payments of \$336.00 per month and were responsible for the taxes (Applicant's Exhibit 3, Tr. 8).

12. Mr. Hamrick turned in his resignation as principal of the school on November 26, 1990 but remained as a teacher and in possession of the house. The Hamricks left town before January 19, 1993 (Tr. 8).

13. The applicant received the property from the Hamricks by a quit claim deed dated February 22, 1993 (Department's Exhibit 1 at 2).

14. Upon receipt of the quit claim deed, the applicant discovered that the property was in need of much repair work. The applicant stated:

Being a church piece of property, most of the work was done by volunteer work members of the church; and that is why it took so long from the period of time of February until September to get it back in shape. During that period of time, the church had offered the property to anybody that is a church worker that wanted to purchase it and go with the same type of a contract for deed; but nobody needed a piece of property or nobody needed housing at that time. So, then we decided, the congregation as a whole decided that probably the best thing to do was to get out of the housing provider type of situation and sell the property (Tr. 11).

15. The applicant finally sold the property on September 1, 1993 (Department's Exhibit 1 at 6).

16. The applicant lost \$7,451.77 on the transaction (Applicant's Exhibit 4).

17. In response to a memorandum from the Department, the applicant submitted a complete official explanation of a Divine Called Worker of the Church and their qualifications and duties. The explanation stated in part:

Men and women who have completed courses of study prescribed or

approved by the Board for Higher Education and offered by one of the Synod's colleges or universities and who have been certified for service by their respective college or university are eligible for receiving appointments from congregations or other eligible entities as consecrated law [sic] workers (Department's Exhibit 1 at 5).

18. Regarding the lay position, the pastor emphasized that the teachers and principals have to meet a religious requirement to teach in the church schools. He stated:

It's different in that teachers go to Synodical colleges or university as they are called now. They receive their BA degree or Bachelor of Science degrees and they are eligible to be on the teaching roster of our Synod. In other words, they have met the religious requirement also; because in our schools they end up teaching religion along with the other subjects that they would teach. For instance, in our grade school, we have preschool to grade eight; and our teachers are asked to be Synodical trained. Those that are not take what we call colloquy to meet the religious requirement to be certified (Tr. 13-14).

19. The applicant testified that a pastor of the church had to have an additional four years of education beyond college before being placed in a church (Tr. 14).

CONCLUSIONS OF LAW: Article IX, 6 of the Illinois Constitution of 1970, 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.

The Illinois Statutes have provisions for exemptions from taxation. In particular, 35 ILCS 19.2 (1992 State Bar Edition), exempts certain property from taxation in part as follows:

All 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, including all such property owned by churches or religious institutions.....

It is well settled in Illinois, that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who

asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956). Whenever doubt arises, it is to be resolved against exemption and in favor of taxation. People ex. rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1941). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967).

In the case of People ex. rel. Pearsall v. The Catholic Bishop of Chicago, 311 Ill. 11 (1924), the Illinois Supreme Court held that the mere fact that a property was intended to be used for an exempt purpose was not sufficient to exempt said property. The Court required that the actual primary exempt use must have begun for the property to be exempt.

In the case of Antioch Missionary Baptist Church v. Rosewell, 119 Ill. App.3d 981 (1983), the Court held that a property which was vacant and not used for any purpose, did not qualify for exemption from property tax, since it was not being used for an exempt purpose.

The Illinois Supreme Court has held that property owned by a church and used as a residence by a teacher at a parochial school was not exempt from taxation even though the property was sometimes used for tutoring backward pupils enrolled in the school. The Court held that the property was not used "exclusively for school and religious purposes" as required by the statute. St. John Evangelical Lutheran Congregation v. Board of Appeals of Cook County, 357 Ill. 69 (1934).

Based upon the facts and law above, I find that Sangamon County parcel index number 14-22-301-018 was either vacant or used for residential purposes during the taxable year in question. I therefore recommend that Sangamon County parcel index number 14-22-301-018 remain on the property assessment rolls for the 1993 assessment year and be assessed to applicant for the period from January 1, 1993 until September 1, 1993.

Respectfully Submitted,

Barbara S. Rowe
Administrative Law Judge

April 10, 1995