PT 02-14
Tax Type: Property Tax
Issue: Religious Ownership/Use

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

CALVARY BAPTIST CHURCH OF TILTON	)	**A.H. Docket # 01-PT-0020**
Applicant	)	**Docket # 00-92-74**
	)	
v.	)	**Parcel Index #23-20-107-015-0060**
	)	**(DOL#1655C)**
	)	**Barbara S. Rowe**
THE DEPARTMENT OF REVENUE	)	**Administrative Law Judge**
OF THE STATE OF ILLINOIS	)	

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. John P. Wolgamont, Acton and Snyder for the Calvary Baptist Church of Tilton; Mr. Kent Steinkamp, Special Assistant Attorney General for the Illinois Department of Revenue.

Synopsis:

The hearing in this matter was held on July 23, 2001, to determine whether Vermilion County Parcel Index No. 23-20-107-015-0060 (DOL #1655C) qualified for exemption during the 2000 assessment year.

Reverend Joseph Humrichous, of the Calvary Baptist Church of Tilton, (hereinafter referred to as the "Applicant") and Mr. Bill Benzing, administrator of the applicant, were present and testified on behalf of the applicant.

The issues in this matter include, first, whether the applicant was the owner of the parcel during the 2000 assessment year; secondly, whether the applicant is a religious organization; and lastly, whether the parcel was used by the applicant for exempt purposes during the 2000 assessment year. After a thorough review of the facts and law presented, it is my

recommendation that the exemption be denied. In support thereof, I make the following findings and conclusions in accordance with the requirements of Section 100/10-50 of the Administrative Procedure Act (5 **ILCS** 100/10-50).

FINDINGS OF FACT:

1. The jurisdiction and position of the Department that Vermilion County Parcel Index No. 23-20-107-015-0060 (DOL #1655C) did not qualify for a property tax exemption for the 2000 assessment year was established by the admission into evidence of Dept. Ex. No. 1. (Tr. p. 8)

2. On December 15, 2000, the Department received the request for exemption of Parcel Index No. 23-20-107-015-0060 (DOL #1655C) from the Vermilion County Board of Review. The board recommended granting a full year exemption for the property. (Dept. Ex. No. 1)

3. On February 16, 2001, the Department denied the requested exemption finding that the property was not in exempt use. On February 27, 2001, the applicant timely protested the denial and requested a hearing. The hearing on July 23, 2001, was held pursuant to that request. (Dept. Ex. No. 1)

4. The applicant acquired the subject parcel by a quitclaim deed dated July 23, 1998. The applicant refers to the property as the F.A.R.M., an acronym for Family And Recreational Ministry. (Dept. Ex. No. 1; Applicant's Ex. No. 2; Tr. pp.25- 27, 33)

5. The subject property is across the street from applicant's church. Located on the 4.54 acre property is a parking lot and a small building consisting of 900 square feet which contains a meeting room, kitchen, and bathrooms. A small shed contains maintenance items used for the care of the property. A children's playground is also on the property. The 18-hole miniature golf course is used for occasional recreational activities of the applicant and others. The pool has been removed. (Dept. Ex. No. 1; Tr. pp. 44-45, 49-51)

6. The applicant limits the use of the F.A.R.M. to its members and guests of its

members. The property is not open to the public. A chain link fence surrounds the property. (Tr. pp. 31-32, 49)

7. In 2000 the property was used for Bible study classes, a meeting of applicant's Deacons/Trustees, by applicant's teen group, children's group, for various fellowship and devotional events, and for 6 other events that the applicant admits are secular. Those events include family reunions, baby showers, birthday parties, and a wedding reception. The applicant requests a donation of $25.00 during the day and $50.00 at night to cover the costs of the power bill. (Dept. Ex. No. 1; Applicant's Ex. No. 6)

8. The applicant asks entities wishing to use the F.A.R.M. property to complete "The F.A.R.M Property Use Form." The form requests that users of the property describe the purpose of the use of the property, the facilities requested to be used, and that the entities provide proof of insurance for the group. (Applicant's Ex. Nos. 4, 5)

9. Entities using the property that filled out the form in 2000 included: Westville Bible Study for 10-18 people every Thursday night for weekly Bible study (no area of use indicated); 20 people from the Crisis Care Bible Institute Class for fellowship and encouragement on April 24 (Spearing Cottage, kitchen, and meeting area requested); 150-175 people with the Southside Church of Nazarene for its kick-off picnic for Faith Promise for Missions on July 22 (kitchen, meeting area, miniature golf course, and playground equipment requested); 50 people with Camp Assurance for a family camp picnic on July 25 (cottage, kitchen and meeting area, miniature golf course, playground equipment, outside picnic tables, badminton and volley ball areas, and an area for grills requested); 7 people with Fairmont Faith Evangelical Methodist Church for putt-putt on July 27 (requested the use of the miniature golf course); 50 people with the Southside Church of Nazarene for its vacation Bible School parade and cookout on July 29 (they needed access to bathrooms and requested the playground equipment and outside picnic tables); 15 people with the Southside Nazarene Youth for the purpose of teen activity and devotion on August 2 (requested the use of the meeting area, miniature golf course, playground equipment, and outside picnic tables). (Applicant's Ex. No. 4)

10. Additional forms were filled out for 2000 for the following groups: 50 people with Home Fire Home School for pictures and golfing on April 26 (requested the cottage, miniature golf course, and playground equipment); 30 people for a family birthday party on May 13 (requested the kitchen, meeting area, miniature golf course, playground equipment, outside picnic tables, and an area for ball/Frisbee); a surprise birthday party was held for 30-60 people on June 4 (the kitchen area, playground equipment, and outside picnic tables were requested); on July 7 a family get-together was held for 60 people (requested the cottage, kitchen area, miniature golf course, playground equipment, and outside picnic tables); a baby shower was held on June 19 in the cottage; a personal shower for 20 people occurred on July 18 in the meeting area; and the entire church was invited to a wedding reception on August 12 (requested the kitchen, meeting area, tables for cakes and gifts, miniature golf course, playground equipment, and outside picnic tables. (Applicant's Ex. No. 5)

11. I take administrative notice that in a decision dated September 1, 1999, Administrative Hearing Docket No. 98-PT-0075, the subject parcel was found not to be exempt for the 1998 assessment year because the parcel was not used for religious purposes.

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.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992)

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the 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). Further, 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)

Pursuant to the authority granted by the Constitution, the legislature has enacted exemptions from property tax. At issue is the religious exemption found at 35 **ILCS** 200/15-40. That portion of the statutes exempts certain property from taxation in part as follows:

> § 15-40. Religious purposes, orphanages or school and religious purposes. All property used exclusively for religious purposes, or used exclusively for school and religious purposes, ...

Property to be exempt because it is used for religious purposes must be so use "exclusively." People ex rel. Wilson v. St. Mary's Hospital, 306 Ill. 174 (1923), People ex rel. Bracher v. Salvation Army, 305 Ill. 545 (1923). Although property is generally susceptible of more than one use at a given time, the exemption from taxation of property used exclusively for school, religious, or charitable purposes is determined upon its primary use and not upon secondary or incidental use. People ex rel. Marsters v. Rev. Saletyni Missionaries, 409 Ill. 370 (1951) Therefore, for religious property tax exemption purposes exclusive means the primary use of the property.

The applicant asserts that there are five tenants or strategies in carrying out the foundation of applicant's church. That foundation is based upon the Biblical book of Matthew chapter 28 which commands that the applicant go into the world and make disciples. The five tenants of that foundation are: teaching the word of God, having fellowship with God's people, breaking of bread (otherwise known as communion), prayer, and evangelism. (Tr. pp. 13-15). The applicant's minister believes that all activities performed on the subject parcel further the evangelism tenant and are therefore religious. This is not what Illinois law requires. While all the tenants help further the applicant's purpose, for property tax exemptions the Illinois courts

and statutes have espoused a much more restrictive definition of what is a religious use of a piece of property. In People v. Deutsche Gemeinde, 249 Ill. 132 (1911) the Illinois Supreme Court stated:

> Unless facts are stated from which it can be seen that the use is religious or a school use in the sense in which the term is used in the constitution the application should be denied. The words used in the constitution are to be taken in their ordinary acceptation and under the rule of strict construction, which excludes all purposes not within the contemplation of the framers of that instrument. While religion, in its broadest sense, includes all forms and phases of belief in existence of superior beings capable of exercising power over the human race, yet in the common understanding and in its application to the people of this State it means the formal recognition of God as members of societies and associations. As applied to the uses of property, a religious purpose means a use of such property by a religious society or body of persons as a stated place for public worship, Sunday schools and religious instruction. *Id.* at 136-137.

The subject property is used for a number of purposes, including recreational and social activities unrelated to religious instruction or public worship. If the applicant had been able to identify which portions of the 4.54 acres were used for Bible study, Sunday school, and devotional purposes, those areas are used for religious purposes as defined by the statutes and case law. Where property is used for two purposes, one of which is exempt from taxation and one of which is not exempt, tax should be imposed against the part of the property that does not qualify for exemption. Fairview Haven v. Department of Revenue, 153 Ill.App.3d 763 (4th Dist. 1987) The areas devoted to miniature golf, the children's playground, and other such activities have not been established as being used for religious purposes by the applicant. As the applicant has established that the meeting room was used for wedding and baby showers, family reunions, and other social events it has not been established that the primary use of that area was for religious purposes.

As an alternative argument, the applicant asserts that "the Department's application of the religious exemption statute in this case is a violation of the Religious Freedom Restoration Act,

775 **ILCS** 35/1 *et seq.* because it imposes a burden on the free exercise of religion by the members of the applicant which is not the least restrictive means of furthering its governmental interest." (Applicant's brief, p. 1) Applicant misunderstands this act.

The "findings and purpose" section of the Religious Freedom Restoration Act, 775 **ILCS** 35/10, states:

> (a) The General Assembly finds the following:
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> (1) The free exercise of religion is an inherent, fundamental, and inalienable right secured by Article I, Section 3 of the Constitution of the State of Illinois.
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> (2) Laws "neutral" toward religion, as well as laws intended to interfere with the exercise of religion, may burden the exercise of religion.
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> (3) Government should not substantially burden the exercise of religion without compelling justification.
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> (4) In Employment Division v. Smith, 494 U.S. 872 (1990) the Supreme Court virtually eliminated the requirement under the First Amendment to the United States Constitution that government justify burdens on the exercise of religion imposed by laws neutral towards religion.
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> (5) In City of Boerne v. P.F. Flores, 65 LW 4612 (1997) the Supreme Court held that an Act passed by Congress to address the matter of burdens placed on the exercise of religion infringed on the legislative powers reserved to the states under the Constitution of the United States.
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> (6) The compelling interest test, as set forth in Wisconsin v. Yoder, 406 U.S. 205 (1972), and Sherbert v. Verner, 374 U.S. 398 (1963), is a workable test for striking sensible balances between religious liberty and competing governmental interests.
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> (b) The purposes of this Act are as follows:
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> (1) To restore the compelling interest test as set forth in Wisconsin v. Yoder, 406 U.S. 205 (1972), and Sherbert v. Verner, 374 U.S. 398 (1963), and to guarantee that a test of compelling governmental interest will be imposed on all State and local (including home rule unit) laws, ordinances, policies, procedures, practices, and governmental actions in all cases in which the free exercise of religion

is substantially burdened.

(2) To provide a claim or defense to persons whose exercise of religion is substantially burdened by government. 775 **ILCS** 35/10.

The cases within the Religious Freedom Restoration Statute deal with 1) students and parents filing suit regarding a public school's policy and practice of allowing student-led, student initiated prayer before football games, Santa Fe Independent School Dist. V. Doe, 530 U.S. 290 (2000); 2) the denial of a building permit to enlarge a church under an ordinance governing historic preservation, City of Boerne v. Flores, 521 U.S. 507 (1997); and 3) the denial of a special use permit to a church that sought to locate in a district that was zoned as a commercial district, City of Chicago Heights v. Living Word Outreach Full Gospel Church and Ministries, Inc., 302 Ill.App.3d 564 (1998). There is no such practice or denial herein.

There is no burden imposed by the Department regarding the ability of this applicant to exercise its religious freedom. Rather the issue is whether or not the applicant's use of the property is exempt from taxation, and whether or not that use is religious. Since not all use of property owned by a religious organization or used by a religious organization is tax exempt, the burden is on the applicant to show that its use of the property falls within statutory parameters. Contrary to this applicant's averments (applicant's minister testified that he believes that religious instruction, fellowship, and evangelism occurs in family's homes, in the workplace of church members, and on a public golf course; the pastor admits there are not too many devotions in the sand volleyball court recently constructed on the property. (Tr. pp. 36-40)), just because the applicant is a religious organization and its church is exempt from taxation does not mean that all property owned by it is exempt from taxation.

The Illinois religious property tax exemption requires religious use, not ownership. If there is a religious use, Illinois does not impose a tax on the property so used. This is in full compliance with the Religious Freedom and Restoration Act. As established above, playing putt-putt golf, playing on children's playground equipment, a bridal shower, birthday party and other such usage of the subject property is not religious use as required by the statute. Bible

study is considered religious use, but the applicant has failed to establish where that took place. The Property Tax Act allows different portions of real property to be taxed and exempted on the basis of the relevant test for exemption. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992). Where property is used for two purposes, one of which would exempt it from taxation and the other would not, it is proper to assess and levy tax against that part of the property that is devoted to a use not exempt from taxation. City of Mattoon v. Graham, 386 Ill. 180 (1944), City of Lawrenceville v. Maxwell, 6 Ill.2d 42 (1955), People ex rel. Kelly v. Avery Coonley School, 12 Ill.2d 113 (1957)

The applicant has failed to establish that the primary use of the subject property is religious. For the foregoing reasons, it is recommended that Vermilion County Parcel Index No. 23-20-107-015-0060 (DOL #1655C) remain on the tax rolls for tax year 2000 and be assessed to the applicant, the owner thereof.

Respectfully Submitted,

Barbara S. Rowe
Administrative Law Judge
March 15, 2002