

PT 03-5

Tax Type: Property Tax

Issue: Religious Ownership/Use

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

**LIFE ABUNDANT
OUTREACH, INC. OF GLENVIEW
APPLICANT**

v.

**ILLINOIS DEPARTMENT
OF REVENUE**

**No. 01-PT-0098
(01-56-0060)
P.I.N: 20-31-400-007-0040**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Mr. Richard J. Drazner, on behalf of Life Abundant Outreach of Glenview (the "Applicant"); Mr. David N. Stone, Assistant State's Attorney for the County of McHenry, on behalf of the McHenry County Board of Review (the "Board"); Mr. Marc Muchin, Special Assistant Attorney General, on behalf of the Illinois Department of Revenue (the "Department").

SYNOPSIS: This matter presents the limited issue of whether real estate identified by McHenry County Parcel Index Number 20-31-400-007-0040 (the "subject property"), was "used exclusively for religious purposes," as required by Section 15-40 of the Property Tax Code (35 ILCS 200/1-1, *et seq.*) at any point during the 2001 assessment year. The underlying controversy arises as follows:

Applicant filed an Application for Property Tax Exemption with the Board on March 29, 2001. The Board reviewed this application and recommended to the Department that the subject property be exempt as of February 28, 2001. On November

29, 2001, the Department issued a determination denying said exemption on grounds of lack of exempt use.

Applicant filed an appeal to this denial and later presented evidence at a formal evidentiary hearing. Following a careful review of the record made at that 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 Group 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. 2.
3. The subject property is located in Barrington, IL and improved with a one story residential facility. Dept. Ex. No. 1.
4. The subject property is located about 48 miles from a church operated by the applicant. Tr. pp. 65-66.
5. Applicant's Articles of Incorporation recite that it is an Ohio corporation organized for purposes of spreading the Christian gospel through means including word of mouth, literature, radio, television, tapes, records and tent crusades. Applicant Ex. No. 3.
6. Applicant's by-laws state, *inter alia*, that:
 - A. Applicant was started and founded by Evangelist Ray Martin in order to spread the Gospel of Jesus Christ by preaching in churches, tent revivals and auditorium crusades;
 - B. Evangelist Ray Martin is president of the corporation; Janice M. Martin, Ray Martin's wife, is vice president;
 - C. Either Ray or Janice Martin may act as secretary-treasurer;

- D. Both Ray and Janice Martin shall remain in their respective positions for life;
- E. Applicant's board of directors shall consist of the Ray and Janice Martin's three children;
- F. Janice Martin shall become applicant's president and pastor at the time of Evangelist Ray Martin's death;
- G. The Martin's children shall continue to maintain applicant's operations at the time of Janice Martin's death;
- H. Salaries for Rev. Ray Martin and Janice M. Martin will be paid by Life Abundant Outreach, Inc.;
- I. At the time of the Martins' deaths, their children "can be paid all assets and cash in one third each of total assets[;]"
- J. "All property, real or personal, shall be taken, held, sold, transferred or conveyed the corporate name of Life Abundant Outreach, Inc. The president and/or vice-president of the Abundant Outreach, Inc. shall certify in such conveyance, lease or mortgage that he same has been duly authorized by the vote of the board or agreement only by Ray and Janice Martin. Such certificate shall conclusive evidence thereof."

Applicant Ex. No. 5; Tr. pp. 20, 70-71.

- 7. Applicant is a registered foreign corporation authorized to transact business in Illinois pursuant to a certificate of authorization issued by the Illinois Secretary of State on July 17, 1979. Applicant Ex. No. 4.
- 8. Applicant obtained ownership of the subject property by means of a warranty deed dated February 28, 2001. Applicant Ex. No. 1.
- 9. Applicant obtained a property tax exemption for real estate identified by Lake County Parcel Index Number 16-32-318-004 pursuant to a certificate issued by the Property Tax Administration Bureau on September 30, 1987. Applicant Ex. No. 6.

10. The property exempted pursuant to this certificate served as Evangelist Martin's parsonage from December of 1981 until it was damaged by fire in January of 2001. Tr. pp. 22-24, 63.
11. Applicant sold this property, and purchased the subject property, because of the fire damage. Tr. pp. 22 –24.
12. Evangelist Martin resided in the subject property as of February 28, 2001. Tr. p. 15, 69-70.
13. Applicant did not introduce any documentary evidence, such as contracts or resolutions of its board of directors, proving that Evangelist Martin was required to live at the subject property as a condition of his employment.

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*, (hereinafter the "Code"), wherein the following are exempted from real estate taxation:

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 a 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 ... performing the duties of the vocation as ministers at such churches or religious institutions or for such religious denominations... [.]

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.

35 ILCS 200/15-40.

Statutes conferring property tax exemptions are to be strictly construed so that all factual and legal inferences 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). Consequently, any doubts or debatable questions as to whether property falls within a given statutory exemption provision must be resolved in favor of taxation. *Id.*

In this case, the relevant statute requires that the property in question be “used exclusively for religious purposes.” 35 ILCS 200/15-40. 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). 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).

The specific “religious purpose” at issue herein is that of a parsonage. The statutory requirements for the exemption of a parsonage are that the property must be: (a)

owned by a duly qualified religious institution; and, (b) used as a housing facility for clergy employed by that religious institution; and, (c) occupied by clergy who must reside in the facility as a condition of employment. 35 ILCS 200/15-40; McKenzie v. Johnson, 98 Ill.2d 87 (1983). Only the last requirement is at issue herein. Dept. Ex. Ex. No. 2.

Here, applicant did not introduce any documentary evidence, such as contracts or board resolutions, proving that its clergyperson, Evangelist Martin, was required to live at the subject property as a condition of his employment. Evangelist Martin did testify that applicant's board of directors did impose such a requirement. Tr. pp. 31, 65-67. However, this board is, per applicant's by-laws, composed only of Evangelist Martin and the members of his immediate family. Applicant Ex. No. 5. Thus, absent appropriate documentation, this testimony, alone, is overtly self-serving.

The State may be constitutionally prohibited from inquiring into the "truth or verity" of the Christian-oriented principles that Evangelist Martin preaches. United States v. Ballard, 322 U.S. 78, 86 (1944)). The State is not, however, forbidden from inquiring whether the evidence applicant presented at hearing is sufficiently credible to establish that Evangelist Martin is in fact required to reside in the subject property as a condition of his employment. *Accord*, Fairview Haven v. Department of Revenue, 153 Ill. App. 3d 763, 773-775 (4th Dist., 1987). For the following reasons, I conclude that the evidence applicant presented is not credible.

Decisions concerning the terms and conditions of Evangelist Martin's employment are normally left to the business judgment of applicant's governing board. Courts generally presume that a governing board will act in good faith and in furtherance of the company's best interest when making such decisions. Spillyards, et al. v. Abboud,

et al., 278 Ill. App.3d 663, 681-682 (1st Dist., 1996). As such, courts usually will not interfere with a governing board's business judgment absent a showing that the governing board acted in bad faith, abused its discretion or committed gross negligence. *Id.*

This protective presumption does not attach where the directors have an improper interest in the subject matter. *Id.* Applicant's by-laws create such an improper interest by providing at least three of applicant's directors, the Martin children, with personal inheritance and distribution rights to applicant's assets. *See*, Applicant Ex. No. 5. Because these rights are personal to the Martin children, one can fully expect that they will exercise their managerial authority in a manner that provides them with the greatest individual return on the assets they will inherit.

Section 15-40 expressly forbids this type of management by barring exemption where the property is "used with a view to a profit." 35 ILCS 200/15-40. Although most of the case law concerning uses for profit has developed in the context of leased property, our courts have uniformly denied exemption to properties used primarily for purposes of providing their owners with some form of return on their investment. People ex rel. Baldwin v. Jessamine Withers Home, 312 Ill. 136, 140-141 (1924); People ex rel. Lloyd v. University of Illinois, 357 Ill. 369 (1934); People ex rel. County Collector v. Hopedale Medical Foundation, 451 Ill.2d 450 (1970); Victory Christian Church v. Department of Revenue, 264 Ill. App.3d 919, 923-924 (1st Dist. 1988); Wheaton College v. Department of Revenue, 155 Ill. App.3d 945 (2nd Dist. 1987); American National Bank and Trust Company v. Department of Revenue, 242 Ill. App.3d 716 (2nd Dist. 1993); Immanuel Evangelical Lutheran Church of Springfield v. Illinois Department of Revenue, 267 Ill. App.3d 678 (1994).

Applicant's managerial structure enables no less than 3/5 of its governing board to obtain such a prohibited return by providing Martin children with *personal* inheritance rights to *all* of applicant's assets. *See*, Applicant Ex. No. 5. To the extent that such assets necessarily include the subject property, I fail to see how applicant could use this property in any manner other than "with a view to profit."

Even if this were not the case, it seems all but factually impossible for a governing board that is subject to Evangelist Martin's personal control¹ and consists of no one except Evangelist Martin and his immediate family to be free from improper influence. Thus, it does not appear that this board is truly free to issue managerial directives that reflect good faith efforts to advance applicant's best interest in furthering

1. *See*, Applicant Ex. No. 5; Tr. p. 66. *See also*, the following testimony:

Q. [On cross examination, by counsel for the Board] Now you say that you're required to live in this parsonage in Barrington?

A. [By Evangelist Martin] Yes, sir.

Q. And the requirement comes from the board of directors?

A. Yes, sir.

Q. You are the board of directors essentially, are you not?

A. No. I've got my family too. It's just not me personally. I'm not the board of directors.

Q. But your decision to put the parsonage in Barrington, some 48 miles from your ... church, was a decision you felt led to by the Lord?.

A. Yes, I did.

Q. So, it sounds like what you decide is what is decided; is that correct?

A. Most of the time.

Q. Right, because you're the father of the family, the leader of the family, are you not?

A. Yes, I am.

Tr. pp. 65-66.

its stated mission of spreading the Gospel. Therefore, any and all managerial directives that this board issues, including ones that purport to establish the terms and conditions of Evangelist Martin's employment, are of suspicious credibility in the first instance and serve no purpose other than to further the private pecuniary interests of Evangelist Martin and his immediate family in the second. Under these circumstances, allowing such directives to have credence in this forum would be tantamount to providing the Martin family with tax savings that they are not lawfully entitled to receive.

Notwithstanding the above, one could argue that the board's managerial directives should be afforded at least some *de minimus* credibility under the business judgment rule. Spillyards, et al. v. Abboud, supra. However, the fact that the subject property is located some 48 miles from a church applicant operates raises doubts as to what, if any, legitimate business reasons applicant's board might have had for requiring Evangelist Martin to live at this particular subject property in the first instance.

Applicant failed to resolve this discrepancy through the evidence it presented at hearing. Accordingly, there exists substantial doubt as to whether it is appropriate to apply the business judgment rule herein. All doubts that arise in exemption cases must be resolved in favor of taxation as a matter of law. 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). Consequently, there is no legal justification for applying the business judgment rule in this case.

More importantly, the evidence applicant presented at hearing did not include corporate minutes or other similar documentation. Absent this type of evidence, I am unable to discern whether any residency requirements applicant's governing board may

have imposed were manifestations of legitimate business judgments. Hence, applicant, which bears the burden of proving all elements of its exemption claim by clear and convincing evidence, (Metropolitan Sanitary District of Greater Chicago v. Rosewell, 133 Ill. App.3d 153 (1st Dist. 1985) has failed to sustain that burden.

The fact that applicant obtained a property tax exemption for property other than the one at issue herein does alter any of the preceding conclusions. It is well established that “each individual claim for exemption must be determined from the facts presented.” Methodist Old People's Home v. Korzen, *supra*, at 156. Moreover, 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). Thus, applicant may be required to relitigate its entitlement to a property tax exemption on an annual basis, even if ownership and use remain unchanged. *Id*; Jackson Park Yacht Club v. Department of Local Government Affairs, 93 Ill. App.3d 542 (1st Dist. 1981); Fairview Haven v. Department of Revenue, 153 Ill. App.3d 763 (4th Dist. 1987)). Therefore, the one and only state of affairs that is relevant to this proceeding is the one that affected this particular subject property from January 1, 2001 through December 31, 2001.

Applicant has failed to prove by credible evidence that Evangelist Martin was required to live at the subject property as a condition of his employment, as plainly mandated by 35 **ILCS** 200/15-40, during any point in the 2001 assessment year.² Therefore, the Department’s initial determination in this matter, denying said property exemption from 2001 real estate taxes under that provision should be affirmed.

2. Section 1-155 of the Property Tax Code defines the term “year” for Property Tax purposes as meaning a calendar year. 35 **ILCS** 200/1-155.

WHEREFORE, for all the aforementioned reasons, it is my recommendation that the of real estate identified by McHenry County Parcel Index Number 20-31-400-007-0040 not be exempt from 2001 real estate taxes under 35 **ILCS** 200/15-40.

Date: 1/22/2003

Alan I. Marcus
Administrative Law Judge