

PT 18-008
Tax Type: Property Tax
Tax Issue: Religious Ownership/Use

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

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

v.

THE UNITY LUTHERAN CHURCH
Applicant

Docket # 17-PT-047
Tax Year 2017

Dept. Docket # 17-82-42

RECOMMENDATION FOR DISPOSITION

Appearances: Robin Gill, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Reverend Willie P. Stallworth, Sr., *pro se*, for the Unity Lutheran Church

Synopsis:

The Unity Lutheran Church (“applicant”) filed an application for a property tax exemption for the year 2017 for a parcel of property located in St. Clair County. The St. Clair County Board of Review (“County”) recommended that the exemption be granted, but the Department of Revenue (“Department”) disagreed with that decision. The applicant timely protested the Department’s decision. The parties waived their right to an evidentiary hearing and asked that the matter be resolved based on the stipulated facts and the attached exhibits. The applicant is seeking an exemption for the property on the

basis that it is used exclusively for religious purposes and not used with a view to profit pursuant to section 15-40 of the Property Tax Code (35 ILCS 200/1-1 *et seq.*). The Department contends that the property was not used exclusively for religious purposes during the year in question, 2017. After reviewing the record, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. The applicant's main church is located at 4200 Caseyville Avenue in East St. Louis, Illinois. The property at issue is located at 1407 N. 45th Street in East St. Louis, which is approximately 4 blocks away from the church. (Dept. Ex. #1, pp. 4-5, 20-21)
2. The property at issue has a single-family residential home on it. The property was donated to the applicant in August of 2015. (Dept. Ex. #1, pp. 4, 7, 15-16)
3. The applicant's pastor resides in St. Louis. (Dept. Ex. #1, p. 20)
4. The applicant provided the following list of 10 events that took place on the property during 2017:

<u>Date</u>	<u>Activity</u>	<u>Held by</u>
1/14/17	Church Council Meeting	applicant
1/21/17	Unity Men Group	applicant
2/18/17	Youth Meeting/Planning	applicant
4/22/17	Lansdowne Community Initiative	LCI ¹
5/27/17	Community Clean-up Staging	LCI/applicant

¹ LCI stands for Lansdowne Community Initiative, which is a project to improve the Lansdowne neighborhood. (Dept. Ex. #1, pp. 49-100) The LCI is exempt from federal income taxes under section 501(c)(3) of the Internal Revenue Code. (Dept. Ex. #1, p. 19) The applicant is located in the Lansdowne neighborhood. (Dept. Ex. #1, pp. 21, 54)

8/12/17	Consultation with Homeowners	LCI-application for repairs
8/19/17	LWML ² Meeting/Clean-up	Unity Women Group
10/21/17	Elder's Meeting	Unity Elders
10/28/17	Outreach to the Roosevelt's	Unity's Outreach Dir.
11/17/17	LCI Board Meeting	LCI

(Dept. Ex. #1, p. 6)

5. The photographs provided by the applicant do not clearly show items being stored on the property other than a few pieces of lumber. (Dept. Ex. #1, pp. 24-30)

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 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 (1st 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).

² The letters LWML were not explained.

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 this 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. ...* (emphasis added; 35 ILCS 200/15-40).

The term “exclusively” refers to the primary purpose for which the property is used, and the fact that the property is incidentally used for a secular purpose will not destroy the exemption. McKenzie v. Johnson, 98 Ill. 2d 87, 98 (1983).

The Department argues that the applicant did not use the property primarily for religious purposes during 2017. The Department acknowledges that the property was used for limited religious purposes, namely the ten events that took place, but the Department believes that this does not amount to a primary or exclusive use for religious

purposes. The Department also argues that the storage does not amount to a primary or exclusive religious use because the photographs do not show very much storage. In addition, the Department states that much of the narrative in the record refers to future use, but very little evidence shows use of the property during the year in question.

The Department has referred to two cases to support its contention. In Faith Builders Church, Inc. v. Department of Revenue, 378 Ill. App. 3d 1037 (4th Dist. 2008), the court found that a daycare and preschool that were operated by Faith Builders Church did not qualify for an exemption because the property was used primarily as a daycare and was not used primarily for religious purposes. In Fairview Haven v. Department of Revenue, 153 Ill. App. 3d 763, 773 (4th Dist. 1987) the court found that the operation of a retirement home allowed the church to engage in evangelization, but operating a retirement home is not primarily religious and does not qualify for the religious purposes exemption. The Department argues that these cases indicate that an exemption under section 15-40 should be reserved for activity that is ordinarily perceived as religious in nature, and the applicant's residential home does not fit into this category. The Department claims that in the present case there is minimal evidence of religious activity on the property during 2017, and the property, therefore, does not qualify for an exemption.

The applicant has presented some conflicting evidence concerning the activities that took place on the property during 2017. The applicant provided a list of 10 events that happened on the property during 2017, and at the bottom of the list the applicant indicated that the property was also used for storage during the whole year. In addition, the record contains references to the use of the property for the pastor's housing during

2017. The record also contains references to future uses of the property such as the headquarters for the applicant's Home Owners Renovation Program that it will be operating with LCI, an office for the pastor, and a place for weekly Bible studies. (Dept. Ex. #1, pp. 6, 21)

In its protest letter dated December 6, 2017, the applicant stated that the property is "solely used as a service center for the redevelopment of the Lansdowne Community Initiative and Pastor's housing when needed." (Dept. Ex. #1, p. 2) With respect to the use as the pastor's housing, the list of 10 events that took place on the property does not include any use for housing. Nevertheless, the parsonage exemption under section 15-40(b) is separate from the religious use exemption under section 15-40(a), and in order to be exempt as a parsonage, section 15-40(b) requires the pastor to reside in the home as a condition of his employment. In the present case, the applicant's pastor resides in St. Louis. Even though the documents submitted indicate that there is "occasional use" as parish housing (Dept. Ex. #1, p. 8), the use of the property as a place for the pastor to stay does not qualify the property for the exemption because the pastor is not required to live there as a condition of his employment.

On the same page that the applicant listed the 10 events that happened on the property during 2017, the applicant also indicated that from January to December of 2017 the property was used for "Storage of supplies for LCI and Unity Lutheran Church, namely, material for outreach and home repairs." (Dept. Ex. #1, p. 6) The photographs provided by the applicant, however, show mostly empty rooms with a very small area containing what looks like debris with a stack of lumber. (Dept. Ex. #1, pp. 24, 25, 26, 27, 28, 29) It is not clear what percentage of the property was supposedly used for

storage. If a portion was used for religious activities or as an outreach center, then that portion would not have been used for storage. The evidence does not clearly and convincingly support a finding that the property was used for storage during 2017.

The remaining question is whether the 10 occasions of use during 2017 are sufficient to find that the property was actually used primarily for religious purposes. The case of Grace Community Church Assemblies of God v. Department of Revenue, 409 Ill. App. 3d 480 (4th Dist. 2011) is helpful in answering this question. In that case, the church sought an exemption for property for the year 2007. Prior to 2007, the property was assessed as agricultural land, which resulted in a small property tax liability. In 2007, the property was reassessed as commercial property. During 2007, the property was primarily vacant with only a small shed for maintenance equipment. The church listed 12 specific dates between January and September 2007 on which the property was used other than for storage. In addition, the church said that the property was intended to be the site of its new church, and it had taken planning steps toward constructing the new facility.

The court in Grace Community stated that the mere intention to use property exclusively for religious purposes is not sufficient to receive an exemption. *Id.* at 488, citing Provena Covenant Medical Center v. Department of Revenue, 236 Ill. 2d 368, 409 (2010). In order to qualify for an exemption, the taxpayer must show *actual use* for exempt purposes; it is not sufficient to show that the property was not used for nonexempt purposes. *Id.*, citing Antioch Missionary Baptist Church v. Rosewell, 119 Ill. App. 3d 981, 982 (1st Dist. 1983) (newly acquired property that remained vacant was not actually used for exempt purpose and not entitled to the exemption). The court noted,

however, that “neither the exemption statute nor cases interpreting it have established a minimum required frequency of use for religious purposes.” *Id.* Furthermore, the court stated that although unused property cannot qualify for an exemption, the actual use of property for exempt purposes includes adapting and developing it for exempt purposes. *Id.*

In Grace Community, the court found that the property was actually used primarily for religious purposes because the church conducted church activities on the property on at least 12 specific occasions. In addition, the court found that the property was in the actual process of development and adaptation for religious use because the church’s plan to construct a new facility rose above the mere intention to develop. It is important to note that the court found the property to be exempt based on all of the circumstances of the case and stated as follows:

[O]ur conclusion plaintiff is entitled to exemption for its land does not result solely from our consideration of either plaintiff’s actual use or the steps it took toward development and adaptation. Rather, this conclusion is based on our consideration of the totality of the circumstances. *Id.* at 492.

In other words, the actual use of the property on at least 12 specific occasions in that case was not, by itself, sufficient to find the property to be exempt. In the present case, the property was used less than 12 times. If 12 specific occasions of use were not sufficient to warrant an exemption in Grace Community, then the less than 12 events in the present case are not sufficient to find the property to be exempt.³ Furthermore, although the evidence in the present case includes references to future uses of the

³ It is also not clear whether all of the 10 events in the present case constitute religious use. Some of the uses may have been secular, although it is not necessary to make that determination.

property, nothing indicates that the property is in the process of being developed or adapted for those future uses.

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 is not sufficient to find that the property is primarily used for religious purposes. Because the applicant has failed to clearly and convincingly show that the property meets the statutory requirements, the exemption must be denied.

Recommendation:

For the foregoing reasons, it is recommended that the property is not entitled to an exemption for the year 2017.

Linda Olivero
Administrative Law Judge

Enter: August 28, 2018