

PT 17-01
Tax Type: Property Tax
Tax Issue: Religious Ownership/Use

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

In re 2013 Property Tax)	Docket Nos.	14-PT-015
Exemption Application of)		13-16-262
)	PIN	13-06-215-002-0000
WINDY CITY)	John E. White,	
COMMUNITY CHURCH)	Administrative Law Judge	

RECOMMENDATION FOR DISPOSITION

Appearances: Daniel Macahon, appeared for Windy City Community Church; Paula Hunter, Special Assistant Attorney General, appeared for the Illinois Department of Revenue.

Synopsis:

This matter arose after the Illinois Department of Revenue (Department) denied the application for a property tax exemption that Windy City Community Church (the Church) filed regarding property it owns, and which is situated in Cook County, Illinois. The issue is whether the property was being used exclusively for religious purposes during 2013, and is, therefore, entitled to the exemption authorized by § 15-40 of Illinois' Property Tax Code (PTC) for that year.

The hearing was held at the Department's offices in Chicago. I have reviewed the evidence offered at hearing, and I am including in this recommendation findings of fact and conclusions of law. I recommend that the Church's exemption application be denied.

Findings of Fact:

1. The Department denied the Church's exemption application after determining that the property was not being used primarily for religious purposes. Department Ex. 1 (copies of, respectively: (1) the Director's Certificate of Records; (2) the Church's protest of the Department's Denial of the Church's exemption application; (3) the Department's Denial; and (4) the Church's completed form PTAX-300-R, Religious Application for Non-Homestead Property Tax Exemption — County Board of Appeals Statement of Facts (application form); (5) notarized letter from the Church, dated August 28, 2013; (6) completed and signed Parsonage/Convent Questionnaire form, dated August 28, 2013)), p. 3.
2. Steven Story (Story) is the Church's senior pastor. Hearing Transcript (Tr.) p. 13 (Story).
3. The property at issue is a 2-story residential building, with five bedrooms and a basement. Department Ex. 1, pp. 1-2 (Steps 1, 5 of application); Tr. pp. 14-15, 27 (Story).
4. The property is situated between two other, adjacent parcels of property the Church owns, and both of which are exempt. Department Ex. 1, p. 7; Tr. pp. 15, 17-20 (Story).
5. During the year at issue and prior thereto, the property was used as the primary residence of Dick Greenman (Greenman), and other members of his family, which include his wife, a daughter, and the daughter's child. Department Ex. 1, p. 7; Tr. pp. 17-20, 27-28 (Story).
6. When the Church filed its exemption application for the property, it also attached a

- completed Parsonage/Convent Questionnaire form. Department Ex. 1, pp. 7-8.
7. Dennis Konczak (Konczak) signed the Church's application form, as its president. Department Ex. 1, p. 5. Story signed the Church's Parsonage/Convent Questionnaire form, as its senior pastor. Department Ex. 1, p. 8.
 8. On the application, in the section where an applicant is asked to describe the property's use, Konczak hand-printed the words "housing for church custodian[.]" Department Ex. 1, p. 4 (Step 3, line 11 of application).
 9. The first question on the Parsonage/Convent Questionnaire form asks, "Is the minister/nuns required, as a condition of employment or association, to reside in the parsonage/convent?" Department Ex. 1, p. 7. The Church's hand-printed response was "No[.]" *Id.*
 10. Greenman had previously acted as a missionary for the Church in Argentina, and is financially supported by the Church. Tr. p. 20 (Story). Greenman has never been ordained a minister within the United States, or, to Story's personal knowledge, anywhere outside the United States. Tr. p. 23 (Story).
 11. Greenman was not a paid custodian of the Church. Tr. p. 26 (Story).
 12. The house on the property was occasionally used by the Church for meetings. Department Ex. 1, pp. 7-8; Tr. pp. 20-21 (Story).
 13. The Church stored Church records in the basement of the property. Department Ex. 1, pp. 7-8; Tr. p. 21 (Story).
 14. Throughout 2013, the property was used primarily as a personal residence, by Greenman and his other family members. Department Ex. 1, p. 4; Tr. pp. 27-28 (Story).

15. The Church did not use the property primarily as a parsonage, or for any public worship activities, during 2013. Department Ex. 1, pp. 4, 7-8; Tr. pp. 27-28 (Story).

Conclusions of Law:

Arguments

During closing arguments, the Church asserted that the property was being used exclusively for religious purposes. Tr. pp. 32-33 (closing argument). The Department contends that the Church's use of the property here does not meet the express requirement set by § 15-40(b) of Illinois' Property Tax Code (PTC), because Greenman is not required, as a condition of any employment or association with the Church, to reside on the property. Tr. pp. 29-31 (closing argument).

Analysis

Article IX of the 1970 Illinois Constitution generally subjects all real property to taxation. Eden Retirement Center, Inc. v. Department of Revenue, 213 Ill. 2d 273, 285, 821 N.E.2d 240, 247 (2004). Article IX, § 6 permits the legislature to exempt certain property from taxation based on ownership and/or use. Ill. Const. Art. IX, § 6 (1970). One class of property that the legislature may exempt from taxation is property used exclusively for religious purposes. Ill. Const. Art. IX, § 6 (1970). The phrase 'exclusively used' means the primary purpose for which property is used and not any secondary or incidental purpose. People ex rel. Nordlund v. Assoc. of the Winnebago Home for the Aged, 40 Ill. 2d 91, 101, 237 N.E.2d 533, 539 (1968).

Pursuant to the authority granted to it by the Illinois Constitution, the General Assembly enacted § 15-40 of the Property Tax Code (PTC), which provides — and, during 2013, provided — in relevant part:

§ 15-40. Religious purposes, orphanages, or school and religious purposes.

(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.

Statutes granting tax exemptions must be construed strictly in favor of taxation, and the party claiming an exemption has the burden of proving clearly and conclusively that the property in question falls within both the constitutional authorization and the terms of the statute under which the exemption is claimed. Board of Certified Safety Professionals of the Americas, Inc. v. Johnson, 112 Ill. 2d 542, 547, 494 N.E.2d 485, 488 (1986); *see also* In the Matter of Jones, 285 Ill. App. 3d 8, 13, 673 N.E.2d 703, 706 (3rd Dist. 1996) (clear and convincing evidence defined “as the quantum of proof which leaves no reasonable doubt in the mind of the fact finder as to the veracity of the proposition in question.”).

My analysis of this issue is based on Illinois case law interpreting PTC § 15-40,

and its statutory predecessors, regarding property owned by an exclusively religious organization and used for residential purposes. I begin with McKenzie v. Johnson, 98 Ill. 2d 87, 456 N.E.2d 73 (1983).

In McKenzie, a property taxpayer in Champaign County sought to have sections of Illinois' PTC that authorized certain property tax exemptions declared unconstitutional, and also sought an injunction prohibiting the Department from granting or approving any such exemptions in prospective tax years. McKenzie, 98 Ill. 2d at 91, 456 N.E.2d at 75. The first statutory section the McKenzie court addressed was § 19.2, the predecessor to current § 15-40. McKenzie contended that the legislature's 1957 amendment authorizing an exemption for parsonages should be declared unconstitutional because parsonages are used primarily for residential purposes and, therefore, could not be used exclusively for religious purposes as required by article IX, section 6, of the Constitution. *Id.* at 97-98, 456 N.E.2d at 76-77 ("In essence McKenzie argues that our cases hold that a parsonage, by its very nature, can never be used exclusively for religious purposes because in every case its residential character must predominate over any other religious uses of the property.").

As the court indicated, McKenzie supported his argument using the court's own, prior interpretation of an earlier version of Illinois' statutory exemption for parsonages, under Illinois' 1870 Constitution. In ultimately rejecting McKenzie's argument, the court distinguished the text of the earlier statute with the text of the 1981 version of § 19.2. Specifically, the court noted that:

The 1905 parsonage exemption declared unconstitutional in *People ex rel. Thompson v. First Congregational Church* authorized an exemption for "[a]ll church property *** exclusively used for public

worship *and* all parsonages or residences *** used by persons devoting their entire time to church work.” (Emphasis added.) (232 Ill. 158, 161, 83 N.E. 536.) That parsonage exemption is fundamentally different from the exemption provided by section 19.2, the statute involved in this case. In providing an exemption for parsonages whether or not they were used exclusively for religious purposes, the 1905 exemption violated the venerable principle that a property tax exemption created by “statute cannot be made broader than the provisions of the constitution and no property except that mentioned in [the exemption] section [of the Constitution] can be exempted by any law passed by the legislature.” ***

The language of the current parsonage exemption, on the other hand, refers to “all *such* property owned by churches or religious institutions *** and used *** as parsonages ***.” (Emphasis added.) (Ill.Rev.Stat.1981, ch. 120, par. 500.2.) The word “such” refers to the preceding language which allows an exemption only for “property used exclusively for religious purposes.” (Ill.Rev.Stat.1981, ch. 120, par. 500.2.) The current parsonage exemption only lists parsonages to illustrate or describe one type of property that, under appropriate circumstances, may qualify for the general religious property exemption which tracks the language of article IX, section 6, of the Constitution. Unlike the 1905 parsonage exemption the current parsonage exemption is subject to the exclusive-religious-use requirements of the Constitution and does not unlawfully enlarge the area of allowable exemptions.

McKenzie, 98 Ill. 2d at 95-96, 456 N.E.2d at 77.

The McKenzie court also contrasted what it called the “extremely narrow construction of primary religious use” that was embraced within the cases cited by McKenzie, with more recent Illinois authority on tax exemptions, and noted that those more recent cases “do not establish that parsonages may never be used exclusively — that is primarily — for religious purposes.” McKenzie, 98 Ill. 2d at 98-99, 456 N.E.2d at 79. Perhaps the most important point to take from McKenzie is to carefully consider the court’s actual holding:

*** Given that residence facilities have, on occasion, qualified for exemption from taxation under the school exemption [citations omitted] and for campus dormitories ..., we cannot say that a parsonage could never qualify for exemption as property used exclusively for religious purposes solely because it is also used for

residential purposes. ... Whether a particular parsonage may be entitled to exemption turns on the evidence showing how the parsonage is being used, but the language exempting parsonages in section 19.2 is not unconstitutional on its face.

McKenzie, 98 Ill. 2d at 99-100, 456 N.E.2d at 79.

In 1994 and again, in 2001, however, the Illinois General Assembly significantly narrowed the scope of the exemption authorized by PTC 15-40, by defining when property owned by a religious organization and used as “[a] parsonage, convent or monastery or other housing facility shall be considered ... to be exclusively used for religious purposes” 35 ILCS 200/15-40 (P.A. 88-455, Art. 15, § 15-40 (eff. January 1, 1994); P.A. 92-333, § 5 (effective Aug. 10, 2001)). Those amendments created an express limitation on the statutory exemption, which the legislature is empowered to impose. Eden Retirement Center, Inc. v. Department of Revenue, 213 Ill. 2d 273, 291, 821 N.E.2d 240, 250 (2004) (“in exempting property the legislature may place restrictions, limitations, and conditions on such exemptions as may be proper by general law.”).

The evidence admitted at hearing shows that the property was not used by any person fitting the legislature’s express condition for property to be considered to be exclusively used for religious purposes. 35 ILCS 200/15-40(b); Tr. pp. 20, 27-28 (Story). Greenman was not a Church minister, and was not required, either by employment or association with the Church, to reside on the property. Department Ex. 1, p. 6. Thus, the Greenman family’s use of the property for residential purposes predominated over any claimed, yet unproven, religious use of the property. See McKenzie, 98 Ill. 2d at 99-100, 456 N.E.2d at 79. To the extent the Church, itself, occasionally used the property, that

use was incidental to the Greenman families' primary use of the property as a personal residence.

Conclusion:

I conclude that the Church has not satisfied its burden to show that the property was actually being used primarily for religious purposes during 2013. Therefore, I recommend that the Director finalize the Department's tentative denial of the Church's application for a property tax exemption, and that the property remain taxable for 2013.



June 13, 2017
Date

John E. White, Administrative Law Judge