

**PT 06-4**  
**Tax Type: Property Tax**  
**Issue: Religious Ownership/Use**

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

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<b>THE DEPARTMENT OF REVENUE</b>	)	
<b>OF THE STATE OF ILLINOIS</b>	)	
	)	<b>Docket # 04-PT-0036</b>
<b>v.</b>	)	<b>PIN 09-11-400-010</b>
	)	<b>PIN 09-11-400-022</b>
<b>BROOKPORT CHURCH OF GOD</b>	)	
	)	
<b>Applicant</b>	)	

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**RECOMMENDATION FOR DISPOSITION**

Appearances: Kent Steinkamp, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Jon D. Robinson of Bolen, Robinson & Ellis for Brookport Church of God.

Synopsis:

This case concerns whether two parcels of property that are located in Massac County and owned by Brookport Church of God (“applicant”) qualify for a property tax exemption for the year 2003. The applicant alleges that the property qualifies for an exemption on the basis that it is used exclusively for religious purposes. One of the parcels contains a residence and the adjoining parcel is vacant. The parcels are located within a half mile of the applicant’s church and were purchased with the intent to build a new church and a multi-purpose building on the vacant parcel and use the residence as a

parsonage. The applicant alleges that its pastor is required to live in the residence as a condition of his employment, and the other parcel is used for religious purposes. The Department of Revenue (“Department”) denied the exemptions because it believed that the pastor was not required to live in the residence as a condition of his employment and the other parcel has not been adapted to religious use. The applicant timely protested the denial and an evidentiary hearing was held. After reviewing the record, it is recommended that one of the parcels be exempt and the other taxed for the assessment year 2003.

FINDINGS OF FACT:

1. The applicant acquired two parcels by warranty deed dated August 12, 2002. The parcels are located within a half mile of the applicant’s current church, which is located in the center of town. A residence is on one parcel. The other parcel is vacant. (Dept. Ex. #1; Tr. pp. 9, 21)

2. The parcel on which the residence is located is approximately 6 acres, and the vacant lot is approximately 29 acres. (Dept. Ex. #1, pp. 6, 16)

3. Prior to the purchase of the property, the applicant’s pastor lived at the parsonage next to the current church. That parsonage was tax-exempt. The current sanctuary has reached its maximum capacity, and the church members determined that a larger sanctuary was needed. (Tr. pp. 10-11, 13)

4. The current church does not have sufficient property surrounding it to allow for expansion, and it does not have open space where the church members can have outdoor activities. (Tr. pp. 19, 23-24)

5. The parcels were purchased for their location and for the purpose of using the residence as a parsonage and constructing a new church and a multi-purpose building on the vacant lot. (App. Ex. #4-7, 10, 11, Tr. pp. 10-13)

6. The residence was purchased with the pastor's approval, and it is a condition of his employment that he live in the residence. He has always been required to live in the parsonage as part of his employment. The use of the parsonage is part of the pastor's compensation package. (Tr. pp. 11, 15-16, 29-32)

7. The pastor uses the residence for informal evangelical events such as church meetings. If a guest speaker or evangelist visits the church, he or she will stay in one of the bedrooms at the residence. (Tr. p. 38)

8. The church performs all the maintenance on the parsonage for the pastor. It also pays for the utilities. Improvements to the home, such as painting, were made prior to the pastor residing there. (Tr. pp. 27, 31)

9. The parsonage next to the current church was sold after the new one was purchased. (Tr. pp. 13, 20-21, 32)

10. The applicant considers 3 acres to be a reasonable yard area for the new parsonage. (Tr. p. 22)

11. The applicant's plan for the vacant parcel has three phases. The first phase is to liquidate \$50,000 of debt. Phase two is to negotiate a loan to build the multi-purpose building. Phase three is to build a new sanctuary. During 2003, the applicant was in phase one of the process, which included fundraisers to liquidate the debt. (App. Ex. #10; Tr. pp. 14, 22, 24)

12. One of the members of the applicant's church drafted plans for the new sanctuary. The plans are not architectural plans, and the applicant has not approved or finalized the plans. (App. Ex. #8, 9; Tr. pp. 22-23, 33-34)

13. Other than the 3 acres considered as the yard for the parsonage, the 32 remaining acres are largely unimproved. After the parcels were purchased, the applicant bought a tractor in order to mow the property and for snow removal. The applicant maintains the property so that the church members may use it for their activities. (Tr. pp. 22, 26-28)

14. The church used the land for different functions such as volleyball, softball, whiffleball, horseshoes, cookouts, fellowship events, and outreach activities. During 2003, the church members did these activities approximately once a quarter. (Tr. pp. 23, 32, 38-39)

CONCLUSIONS OF LAW:

The applicant has requested an exemption from property tax pursuant to section 15-40 of the Property Tax Code (35 ILCS 200/1-1 *et seq.*), which provides in part as follows: "Property used exclusively for \* \* \* religious purposes, \* \* \* qualifies for exemption as long as it is not used with a view to profit." 35 ILCS 200/15-40(a). This section further provides as follows:

- (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(b).

In determining whether property is exempt under this provision, the primary use of the property, rather than its incidental use, must be considered. Illinois Institute of Technology v. Skinner, 49 Ill. 2d 59, 65-66 (1971); People ex rel. Pearsall v. Catholic Bishop of Chicago, 311 Ill. 11, 16 (1924). In order to qualify for the exemption, the property must actually be used for the exempting purpose. Illinois Institute of Technology, *supra* at 64. Intention to use is not the same as actual use. *Id.*

It is well-established that property tax exemption provisions are strictly construed in favor of taxation. Chicago Patrolmen's Association v. Department of Revenue, 171 Ill. 2d 263, 271 (1996). The party claiming the exemption has the burden of clearly proving that it is entitled to the exemption, and all doubts are resolved in favor of taxation. *Id.*; City of Chicago v. Department of Revenue, 147 Ill. 2d 484, 491 (1992).

The applicant has established that the parcel containing the residence is exempt pursuant to section 15-40(b) on the basis that its pastor is required to reside there as a condition of his employment. The pastor must live in close proximity to the sanctuary, and the residence is within a half mile of the current sanctuary. It will be next door to the new sanctuary. The applicant maintains the parsonage and pays for the utilities. Informal evangelical events, such as church meetings, are held there, and the applicant's

guest speakers or evangelists stay there when visiting the church. The applicant has provided sufficient evidence to show that this parcel is entitled to the exemption.

With respect to the vacant lot, the Department argues that it has not been adapted to religious use. The Department contends that nothing is being done on the real estate, and the plans are not architectural and are not final. The Department claims that because the property is not being used for anything, it could possibly be used for a non-exempt use.

The applicant argues that the property is being used, albeit not every day, on a regular basis. The applicant contends that it has plans for the buildings on the property, and the applicant is on target towards completing the buildings. The applicant claims that it has cleaned up the property and purchased equipment in order to do so. The applicant maintains that it has not used the property to generate income, and the view of the property is open to the public so if it is used for a non-exempt use, the public will know about it.

The evidence is not sufficient to show that the vacant lot has been adapted primarily for religious purposes during 2003. The applicant considers 3 acres to be a reasonable yard area for the parsonage, and the remaining 32 acres are largely unimproved. From the photographs provided, it appears as though these acres have mostly trees on them. During 2003, the applicant was still in phase one of its plan to build the new sanctuary and multi-purpose building; phase one is to liquidate the debt. The plans for construction of the buildings had not been finalized at that time, so no construction had actually begun on the property. The parcel with the parsonage is 6 acres, and it is not clear whether the outdoor activities that took place on the property

were done on the remaining 3 acres of the parsonage parcel or on the 29 acres of the unimproved parcel. From the pictures, it appears as though they were done on the property near the parsonage, and the maintenance that took place on the property was for the same area. For the year in question, the evidence does not support a finding that the vacant lot was primarily used for religious purposes.

Recommendation:

For the foregoing reasons, it is recommended that the parcel with the residence be exempt from property taxes for the year 2003, and the vacant parcel should not be exempt.

Linda Olivero  
Administrative Law Judge

Enter: January 9, 2006