

PT 08-16

Tax Type: Property Tax
Issue: Educational Ownership/Use
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.

OLD ORDER AMISH PAROCHIAL
SCHOOL

Applicant

Docket # 07-PT-0034

Tax Year 2006

RECOMMENDATION FOR DISPOSITION

Appearances: Robin Gill, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Alvin J. Herschberger, *pro se*, for Old Order Amish Parochial School

Synopsis:

Old Order Amish Parochial School (“applicant”) filed an application for a property tax exemption for the year 2006 for a parcel of property located in Douglas County. The property is used for an Amish parochial school. The Department of Revenue (“Department”) denied the applicant’s request for an exemption on the basis that the property is not in exempt ownership, and the applicant timely protested the Department’s decision. The parties filed a Joint Stipulation of Facts with supporting documents and indicated the sole issue in this matter is whether the applicant’s use and

control of the parcel qualifies it for an exemption for the time period of January 1, 2006 to August 30, 2006. The deed for the property shows the date of ownership by the applicant as August 31, 2006, and the Department granted a partial exemption for the time period of August 31, 2006 through December 31, 2006. The parties waived their right to an evidentiary hearing and requested that this matter be resolved based on the stipulations and documents that they submitted. After reviewing the submissions, it is recommended that this matter be resolved in favor of the applicant.

FINDINGS OF FACT:

1. The applicant is the trustee of Lake Fork Amish Parochial School (“Lake Fork”) located in Douglas County, Illinois. (Stip. #1)
2. Lake Fork operates under the umbrella of “Old Order Amish Parochial School.” (Dept. Ex. #1, p. 6)
3. The applicant filed an application for an exemption for a 2.0 acre parcel of property upon which is located an Amish parochial school. (Stip. #2)
4. The deed that shows the applicant owns the property is dated August 31, 2006. The deed was recorded on September 25, 2006. The applicant indicated on its application that the date of ownership was August 31, 2006. (Stip. #6; Dept. Ex. #1, pp. 12-13)
5. The Department granted a partial exemption, 34%, for the property for the time period of August 31, 2006 through December 31, 2006, which was based on the date of ownership as indicated on the deed.¹ (Stip. #3, 4)

¹ The partial exemption for this property for 2006 was granted under another docket number for the Department, number 06-21-16. (Stip. #3)

6. The applicant is seeking an exemption for January 1, 2006 through August 30, 2006, which is the time period that was denied by the Department. (Stip. #5)
7. On May 5, 2004, the applicant paid the previous owner \$1,400 for the property. This amount was the full purchase price for the property. A contract for the sale was executed between the parties on May 28, 2004. The last paragraph of the contract states "Lake Fork shall, at their expense, prepare the necessary documents to transfer the property to Lake Fork." (Stip. #9, 10; Dept. Ex. #1, pp. 6-7, 22-23)
8. Between May and September 2004, the Amish parochial school was built. On September 15, 2004, the school opened for students. Since September 2004, the property has been used exclusively for elementary school education except during the summer vacation period. (Stip. #11)
9. Since May 2004, the property has been used solely by the school. The previous owner has never used any of the land or the improvements since that date. The property has not been leased or rented since that date. (Stip. #9, 12; Dept. Ex. #1, p. 5)
10. The applicant has maintained control over the subject property from the time of purchase (May 5, 2004), and it has been used exclusively as a school since September 2004. (Stip. #13)

CONCLUSIONS OF LAW:

Article IX, section 6 of the Illinois Constitution of 1970 authorizes the General Assembly to grant property tax exemptions in limited circumstances 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.

Pursuant to this constitutional authority, the General Assembly enacted section 15-40 of the Property Tax Code (35 ILCS 200/1-1 *et seq.*), which is titled “Religious purposes, orphanages, or school and 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. 35 ILCS 200/15-40.

In order to receive an exemption under this section, the applicant must establish that the property is used exclusively for school and religious purposes and is not used with a view to profit. See First Presbyterian Church of Dixon v. Zehnder, 306 Ill. App. 3d 1114, 1116 (2nd Dist. 1999). Ownership is not relevant to this exemption.²

The facts in this case establish that in May 2004 the applicant paid the previous owner \$1,400 for the 2 acre parcel of property and entered into a contract for the sale of the property. The \$1,400 was the full purchase price for the property. Although it is not clear why the deed for the property was not executed until August 2006, since May 2004 the previous owner has not used the property or received any additional payments for the property. The property has not been leased or rented during that time period. During

² Ownership is also not relevant to the exemption under section 15-35(c), which exempts property used for educational purposes. See 35 ILCS 200/15-35(c); Swank v. Department of Revenue, 336 Ill. App. 3d 851, 862-863 (2nd Dist. 2003).

2006, the property was used only by the applicant and has been used only as a school for Amish children. Because the facts are clear that during 2006 the property was used exclusively as an Amish parochial school and was not used with a view to profit, the applicant is entitled to an exemption for the entire year of 2006.

Recommendation:

For the foregoing reasons, it is recommended that the 2 acre parcel of property is entitled to the exemption for the year 2006.

Linda Olivero
Administrative Law Judge

Enter: August 21, 2008