

PT 99-15

Tax Type: PROPERTY TAX

Issue: Charitable Ownership/Use

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

**NORTH AMERICAN ISLAMIC
TRUST, INC.,
APPLICANT**

v.

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE**

Docket No: 98-PT-0018

Real Estate Exemption

**For 1996 Tax Year
P.I.N. 08-15-328-014**

DeKalb County Parcel

**Robert C. Rymek
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Nasser Nubani on behalf of North American Islamic Trust, Inc.

SYNOPSIS

This proceeding raises the limited issue of what portion of the second-floor of the building located on DeKalb County Parcel Index Number 08-15-328-014 (hereinafter the “subject property” or “subject parcel”) should be exempt from 1996 property taxes. The applicant is seeking exemption under section 15-40 of the Property Tax Code which exempts “All property used exclusively for religious purposes” (35 ILCS 200/15-40).

This controversy arose as follows:

The applicant, North American Islamic Trust, Inc., filed an application with the DeKalb County Board of Review (hereinafter the “Board”) seeking an exemption from

1996 property taxes. Dept. Ex. No. 1. The Board reviewed the application on November 15, 1996, and recommended that the exemption be denied because the property “is not zoned for the use they are requesting.” On November 14, 1997, the Illinois Department of Revenue (hereinafter the “Department”) granted the applicant a partial exemption. The exemption included only the first floor of the building located on the subject property along with a second floor bedroom in which the Imam lived. The Department denied exemption for a portion of the second floor which was used by a “housekeeper.” The exemption was further limited to the 50% of the 1996 tax year during which the applicant used the subject property for religious purposes.

The applicant filed a timely appeal seeking to have the entirety of the second floor included in the exemption. The applicant did not dispute that any exemption should be for only the 50% of the 1996 tax year. On November 23, 1998, a formal administrative hearing was held at which evidence was presented. Following a careful review of all the evidence, it is recommended that the subject property be exempted in its entirety for 50% of the 1996 tax year.

FINDINGS OF FACT

1. Dept. Gr. Ex. No. 1 and Dept. Ex. No. 2 establish the Department’s jurisdiction over this matter and its position that the second floor of the building located on the subject property was not in exempt use in 1996.
2. The subject parcel is located at 721 Normal Road in DeKalb. Dept. Ex. No. 1.
3. The subject property is improved with a two-story building (hereinafter the “building”). Dept. Ex. No. 1.

4. The first story of the building is used as a Mosque where worship services are conducted. Dept. Ex. No. 1; Tr. pp. 8-10.
5. The applicant began using the building for prayer services in July of 1996. Dept. Ex. No. 1.
6. The second story of the building is used as the residence of an Imam and a Muezzin. Dept. Ex. No. 1; Tr. pp. 19.
7. The Imam serves as the primary prayer leader and religious instructor. Tr. pp. 8-13.
8. The Muezzin's primary duty is to perform the ritualistic prayer call for all prayer services. The Imam is not supposed to perform the prayer call and without the prayer call, the service would be incomplete. Tr. pp. 15-16, 23.
9. The Muezzin also serves as an assistant Imam who serves as the prayer leader when the Imam is unavailable and keeps the Mosque clean and undefiled. Tr. pp. 14-19; 22-23.
10. Because prayer services are conducted at the mosque five times a day beginning at dawn and concluding in the evening, it is necessary for the Imam and the Muezzin to live on the premises. Tr. pp. 9-10.

CONCLUSIONS OF LAW

An examination of the record establishes that this applicant has demonstrated by the presentation of testimony, exhibits and argument, evidence sufficient to warrant an exemption for the entire second floor for 50% of the 1996 tax year. In support thereof, I make the following conclusions:

In the instant case, it is undisputed that the majority of the subject property is entitled to exemption for the 50% of the 1996 tax year during which the applicant actually conducted religious activities on the premises. The only issue is how much of the upstairs residential area should be exempted for that time period.

Article IX, section 6 of the Illinois Constitution of 1970 limits the General Assembly's power to exempt property from taxation 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.

The General Assembly may not broaden or enlarge the tax exemptions permitted by the constitution or grant exemptions other than those authorized by the constitution. Board of Certified Safety Professionals v. Johnson, 112 Ill.2d 542 (1986). Furthermore, article IX, section 6 does not in and of itself grant any exemptions. Rather, it merely authorizes the General Assembly to confer tax exemptions within the limitations imposed by the constitution. Locust Grove Cemetery v. Rose, 16 Ill.2d 132 (1959). Thus, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions or limitations on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App.3d 497 (1st Dist.1983).

In accordance with its constitutional authority, the General Assembly enacted section 15-40 of the Property Tax Code which provides:

Religious purposes, orphanages, or school and religious purposes. 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 (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 denominations, and including the convents and monasteries where persons engaged in religious activities reside.

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 or related activities shall, as a condition of their employment or association, reside in the facility. (Emphasis added.) 35 ILCS 200/15-40.

The affidavit of use the applicant initially filed with the Department indicated that the upstairs was used as a residence by the Imam and a “housekeeper.” Tr. pp. 21-22. Based upon that affidavit, the Department exempted only that portion of the upstairs used exclusively by the Imam. The Department denied exemption for the portions used by the housekeeper.

At the hearing, the applicant presented evidence that the use of the term “housekeeper” was inaccurate and that a more appropriate term would be “Muezzin.” Tr. pp. 22-23. The applicant then presented evidence that although the Muezzin is responsible for keeping the Mosque clean and undefiled, he also performs more traditional religious duties on the premises, such as the ritualistic “prayer calling.” Moreover, the Muezzin is responsible for leading the prayer services when the Imam is unavailable. Finally, the applicant offered evidence that it was necessary to have the Muezzin live on the premises because prayer services are conducted five times every day beginning at dawn and concluding in the evening. Tr. pp. 22-23.

Because the Muezzin performs religious duties on the premises and because the Muezzin could not effectively perform those duties without living at the premises, it is apparent that not only should the portion of the second floor used by the Imam be exempt, but also those portions used by the Muezzin.

Therefore, for the reasons stated above, I recommend that the entirety of DeKalb County Parcel Index Number 08-15-328-014 be exempted from property taxes for the 50% of the 1996 tax year during which the applicant used the subject property for religious purposes.

Date

Robert C. Rymek
Administrative Law Judge