

PT 99-3

Tax: PROPERTY TAX
Issue: Charitable Ownership/Use

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

EVANGELICAL MISSION,
APPLICANT

v.

ILLINOIS DEPARTMENT
OF REVENUE

No. 95-16-1172

Real Estate Tax Exemption for
1995 Assessment Year

P.I.N: 20-29-416-043

Cook County Parcel

Alan I. Marcus
Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

SYNOPSIS: This proceeding raises a very limited issue, that being whether any part of real estate identified by Cook County Parcel Index Number 20-29-416-043 (hereinafter the "subject property" or the "subject parcel") qualifies for exemption under 35 ILCS 200/15-40,¹ wherein "[a]ll property used exclusively for religious purposes" is exempted from real estate taxation.

1. In People ex. rel. Bracher v. Salvation Army, 305 Ill. 545 (1922), the Illinois Supreme Court held that the issue of property tax exemption necessarily depends on the statutory provisions in force during the time for which the exemption is claimed. This applicant seeks exemption from 1995 real estate taxes. Therefore, the applicable provisions are those found in the Property Tax Code, 35 ILCS 200/1 *et seq.*

The controversy arises as follows:

On January 26, 1996, Evangelical Mission (hereinafter the "applicant") filed a Real Estate Tax Exemption Complaint with the Cook County Board of Review (hereinafter the "Board"). Dept. Group. Ex. No. 1, Doc. A. The Board reviewed applicant's complaint and subsequently recommended to the Illinois Department of Revenue (hereinafter the "Department") that "no action" be taken on applicant's complaint. Dept. Group Ex. No. 1, Doc. B.

The Department examined the Board's recommendation and issued its determination in this matter on March 6, 1997. Said determination found as follows:

- A specifically identifiable portion of the subject property was exempt from 1995 real estate taxes, but only for 47% of the 1995 assessment year;
- A separate and distinct portion of the subject property was not so exempt;
- The exempt portion amounted to 23% of the building and a matching percentage of its underlying land; and,
- The remaining 77% of the building, and a corresponding percentage of its underlying land was not exempt from 1995 real estate taxes, as it was not in exempt use.

Dept. Ex. No. 2

Applicant filed a timely request for hearing on March 31, 1997 (Dept. Ex. No. 3) and later presented evidence at a formal evidentiary hearing. Following submission of all evidence and a careful review of the record, it is recommended that the Department's determination be modified to reflect that: (1) a specifically identifiable portion of the subject property should be exempt from 1995 real estate taxes, but only for 47% of the 1995 assessment year; (2) a separate and distinct portion of said property should not be so exempt; (3) the exempt portion should equal 98% of the building and a concurrent percentage of its underlying land; and (4) the non-

exempt portion should equal 2% of the building and a proportional amount of its underlying land.

FINDINGS OF FACT:

1. The Department's jurisdiction over this matter and its position therein are established by the admission into evidence of Dept. Group Ex. No. 1 and Dept Ex. No. 2.
2. The Department's position in this case is that: (1) 23% of the building located on the subject property, and a corresponding percentage of its underlying land, were in exempt use during 47% of the 1995 assessment year, but that (2) the remaining 77% of said building and a matching percentage of its underlying ground were not in exempt use during that time. *Id.*
3. Applicant was originally incorporated under the General Not For Profit Corporation Act of Illinois on January 29, 1970. Its corporate purposes are to:

win souls; care for the needy; feed the hungry; clothe the naked; teach all nations; do evangelical and missionary work both at home and abroad; help in the program of rehabilitation; aid in emergencies, distress and any other effort that can possibly be of assistance to fallen humanity.

Applicant Ex. No. 1; Doc. A.

4. The subject property is located at 1150 W. 78th Street, Chicago IL 60620. Applicant acquired its ownership interest therein pursuant to the terms of an installment sale contract dated July 14, 1995. Dept. Group Ex. No. 5.
5. Applicant fully performed all obligations it incurred under the terms of this contract. These responsibilities included, *inter alia*: purchasing the subject property for \$40,000; making a \$6,000 deposit prior to the date of closing; paying

the remaining balance in 23 consecutive monthly payments of \$273.70; and, making a final payment of the remaining balance on July 15, 1997. *Id*; Tr. p. 14.

6. The subject property is improved with a one story building. This structure occupies approximately 5,894 square feet and contains a partial basement. Applicant Ex. No. 9.
7. The building was in extreme disrepair and contained 32 rooms when applicant purchased it. Shortly after assuming possession, applicant undertook a series of repairs that prepared the building for its own use. Tr. p. 17.
8. These repairs included knocking down several walls, putting in an alarm system and pews, carpeting certain rooms, repairing electrical wires that had been cut, scraping old paint off walls, removing or repairing certain sinks, securing various doors and preparing the pastor's office. Tr. pp. 17-19.
9. Applicant was, however, able to use certain areas of the subject property while the renovations were in progress. These areas encompassed, *inter alia*, spaces used for: prayer services four times per week; a library that contained a number of religious texts and doubled as the pastor's study; two dining rooms that were used for post-prayer service meals; and, various storage areas. Applicant Ex. No. 4, Docs. A, B; Tr. pp. 17-43.
10. Applicant also leased a portion of the building to a private individual. This area, which consisted of two 9 x 7 rooms, was demised to "Willie Green, D/B/A Green's Janitorial Services," pursuant to the terms of a standard form residential lease which ran from September 1, 1995 until August 31, 1996. Applicant Group Ex. No. 4, Docs A, B; Applicant Ex. No. 6.

CONCLUSIONS OF LAW:

An examination of the record establishes that this applicant has partially demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exempting part of the subject property from 1995 real estate taxes. Accordingly, under the reasoning given below, the Department's original determination in this matter should be modified to reflect that 98% of the building located on the subject property and a corresponding percentage of the underlying land should be exempt from 1995 real estate taxes for 47% of the 1995 assessment year. In support thereof, I make the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 provides 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 power of the General Assembly granted by the Illinois Constitution operates as a limit on the power of the General Assembly to exempt property from taxation. 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, Inc. v. Johnson, 112 Ill.2d 542 (1986). Furthermore, Article IX, Section 6 is not a self-executing provision. Rather, it merely grants authority to the General Assembly to confer tax exemptions within the limitations imposed by the Constitution. Locust Grove Cemetery Association of Philo, Illinois v. Rose, 16 Ill.2d 132 (1959). Moreover, 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).

Pursuant to its Constitutional mandate, the General Assembly enacted the Property Tax Code (35 ILCS 200/1-3 *et seq.*). The provisions of the Code which govern disposition of the instant proceeding are found in section 15-40, wherein "[a]ll property used exclusively for religious purposes ... not leased or otherwise used with a view to profit" is exempted from real estate taxation. 35 ILCS 200/15-40.

Applicant bears the burden of proving that its property falls within the appropriate statutory exemption by clear and convincing evidence. Metropolitan Sanitary District of Greater Chicago v. Rosewell, 133 Ill. App.3d 153 (1st Dist. 1985)). Furthermore, the following rules of statutory construction and interpretation apply in all property tax exemption cases: (1) a statute exempting property or an entity from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation (People ex rel. Nordland v. Home for the Aged, 40 Ill.2d 91 (1968), Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987)); and, (2) the word "exclusively" when used in section 200/15-40 and other exemption statutes means "the primary purpose for which property is used and not any secondary or incidental purpose" (Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App.3d 186 (4th Dist. 1993)).

Prior to 1909, it was a requirement for the exemption of property used for religious purposes that it be owned by the organization that claimed the exemption. Since that time however, a statutory amendment eliminated that requirement in cases that do not involve parsonages. The determinative test of exemption then became use and not ownership. People ex rel. Bracher v. Salvation Army, 305 Ill. 545 (1922). *See also*, American Nat'l Bank and Trust Co. v. Dep't of Revenue, 242 Ill. App.3d 716 (2nd Dist. 1993).

In People ex rel. McCullough v. Deutsche Evangelisch Lutherisch Jehova Gemeinde Ungeanderter Augsburgischer Confession, 249 Ill. 132, 136-137, (1911), (hereinafter "McCullough"), the Illinois Supreme Court defined the term "religious use" as follows:

As applied to the uses of property, a religious purpose means a use of such property by a religious society or persons as a stated place for public worship, Sunday schools and religious instruction.

Applicant's actual use determines whether the property in question is used for an exempt purpose. Skil Corporation v. Korzen, 32 Ill.2d 249 (1965); Comprehensive Training and Development Corporation v. County of Jackson, 261 Ill. App.3d 37 (5th Dist. 1994). Furthermore, adapting and developing a property for an eventual exempt use can be sufficient to satisfy the actual use requirement. Weslin Properties v. Department of Revenue, 157 Ill. App.3d 580 (2nd Dist. 1987).

Based on the evidence contained in this record, I conclude that applicant practices a "religion" as that word is defined by Illinois case law.² I further conclude that applicant used certain portions of the building, including the prayer area and the library "exclusively" for "religious purposes" during the period under consideration.

With respect to the dining rooms and storage areas, I conclude applicant's use of such areas served to effectuate the exempt uses taking place in the prayer area and library. As such,

2 . That definition, originally articulated in McCullough, is as follows:

... while religion, in its broadest sense, includes all forms and phases of belief in the existence of superior beings capable of exercising power over the human race, yet in the common understanding and in its application to the people of this State it means the formal recognition of G-D as members of societies and associations."

McCullough, *supra* at 136.

these areas qualify as being in exempt use under the "reasonably necessary" standard articulated in Evangelical Hospitals Corporation v. Department of Revenue, 233 Ill. App.3d 225 (2nd Dist. 1991). (holding that property used for purposes that are "reasonably necessary" to effectuate exempt activity qualify for exemption). For this and all the aforesated reasons, those parts of the Department's determination pertaining to the prayer area, the library, the dining rooms and the storage areas should be reversed.

Applicant also took numerous steps, including knocking down several walls, putting in an alarm system and pews, carpeting certain rooms, repairing electrical wires that had been cut and scraping old paint off walls, to adapt and develop the other portions of the subject property for exempt use as required by Weslin Properties, *supra*. Therefore, those portions of the Department's determination pertaining to all areas being so developed should be reversed.

The only portions of the subject property that were not used for exempt purposes were the two 9 x 7 areas that applicant leased to a private individual. These areas were not used for exempt purposes, as they fall within that portion of Section 15-40 which bars exemption where the property is leased or otherwise used with a view to profit. *Accord*, People ex rel. Baldwin v. Jessamine Withers Home, 312 Ill. 136, 140 (1924); Salvation Army v. Department of Revenue, 170 Ill. App.3d 336, 344 (2nd Dist. 1988). However, this non-exempt use only defeats exemption of that 2% of the subject property³ which applicant actually leased because exemptions can be prorated on the basis of applicant's capacity to prove that specifically identifiable portions of the subject property were actually used for exempt purposes. Illinois Institute of Technology v. Skinner, 49 Ill.2d 59, 64 (1971).

3. 126 (total leased square footage in building) / $5,894$ (total square footage of building) = $.0214$ (rounded) or 2%.

Applicant has proven that the remaining 98% of the building was actually being used for "religious purposes" or undergoing development for such uses in 1995. Because applicant did not begin to engage in these uses until it acquired ownership of the subject property on July 14, 1995,⁴ its exemption claim must be prorated to account for the period of non-exempt use that took place between January 1, 1995⁵ and July 13, 1995.

That proration is accomplished pursuant to section 9-185 of the Property Tax Code, the relevant portion of which states as follows:

The purchaser of property on January 1 shall be considered the owner [who is therefore liable for any taxes due] on that day. However, when a fee simple title or lesser interest in property is purchased, granted, taken or otherwise transferred for a use exempt from taxation under this Code, that property shall be exempt from the date of the right of possession, except that property acquired by condemnation is exempt as of the date the condemnation petition is filed. Whenever a fee simple title or lesser interest in property is purchased, granted, taken or otherwise transferred from a use exempt from taxation under this Code to a use not so exempt, that property shall be subject to taxation from the date of the purchase or conveyance.

35 ILCS 200/9-185.

Applicant's exempt use began July 14, 1995. Consequently, section 9-185 limits its exemption claim to the 47% of the 1995 assessment year that occurred between July 14, 1995 and December 31, 1995. Its claim is also limited, by terms of the foregoing analysis, to that 98%

4. In connection with this conclusion, *see*, Christian Action Ministries v. Department of Local Government Affairs, 56 Ill. App.3d 102 (1st Dist. 1977). (contract for deed requiring, *inter alia*, that appellant produce a sizeable down payment and make substantial monthly payments held sufficient to vest appellant with ownership of real estate for property tax purposes) .

5. All assessment years, including 1995, begin on January 1 of each calendar year per Section 9-185 of the Property Tax Code (35 ILCS 200/9-185). *See also*, Forest Preserve of DuPage County v. Department of Revenue, *et al*, 266 Ill. App.3d 264, 274 (2nd Dist. 1994),

of the building (and a proportionate amount of its underlying ground) which applicant actually used for exempt purposes during that time. Therefore, the Department's determination should be modified to reflect these limitations.

WHEREFORE, for all the above-stated reasons, it is my recommendation that 98% of the building and underlying land located on real estate identified by Cook County Parcel Index Number 20-29-416-043 be exempt from 1995 real estate taxes, but only for 47% of the 1995 assessment year.

April 6, 1999
Date

Alan I. Marcus
Administrative Law Judge

(status of the property for taxation and the liability for taxation is fixed on January 1 of each assessment year).