

PT 11-02
Tax Type: Property Tax
Issue: Religious Ownership/Use

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

HARE KRISHNA
TEMPLE OF THE HEART,

APPLICANT

v.

THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS

Docket No: 10-PT-0022 (8-16-876)

Real Estate Exemption

For 2008 Tax Year
P.I.N. 31-15-303-003-0000

Cook County Parcel

Kenneth J. Galvin
Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Mr. William Bell, *pro se*, on behalf of Hare Krishna Temple of the Heart; Mr. John Alshuler, Special Assistant Attorney General, on behalf of the Department of Revenue of the State of Illinois.

SYNOPSIS:

This proceeding raises the issue of whether real estate, identified by Cook County Parcel Index Number 31-15-303-003-0000 (hereinafter the “subject property”), qualifies for exemption from 2008 real estate taxes, under 35 ILCS 200/15-40, wherein all property used exclusively for religious purposes is exempted from real estate taxation.

The controversy arises as follows: On October 15, 2009, Hare Krishna Temple of the Heart (hereinafter “Hare Krishna”) filed an Application for Property Tax Exemption with the Cook County Board of Review (hereinafter the “Board”). The Board reviewed

Hare Krishna's application and recommended to the Illinois Department of Revenue (hereinafter the "Department") that a partial-year exemption be granted. After reviewing the Board's recommendation, the Department issued a determination dated December 10, 2009, denying the requested exemption on the grounds that the property was not in exempt ownership, the property was not in exempt use, and Hare Krishna was not the owner of the subject property. Dept. Ex. No. 1. On February 1, 2010, Hare Krishna filed a protest of the denial and presented evidence at a formal evidentiary hearing on November 10, 2010, with William Bell, Priest and President of the Board of Directors of Hare Krishna, testifying. Following submission of all evidence and a careful review of the record, it is recommended that the Department's denial be affirmed.

FINDINGS OF FACT:

1. Dept. Ex. No. 1 establishes the Department's jurisdiction over this matter and its position as established by the determination issued by the Department's Office of Local Government Services on December 10, 2009. The Department's position is as follows: "The property is not in exempt ownership. The property is not in exempt use. Applicant is not the owner of the property." Tr. pp. 4-5; Dept. Ex. No. 1.
2. Hare Krishna filed Articles of Incorporation with the State of Illinois on May 25, 2006. Hare Krishna is "dedicated to sharing thousands of years of the spiritual science of God (Krishna) consciousness through bhakti-yoga, the yoga of loving devotional service to God." Tr. pp. 15-16; App. Ex. No. 2.
3. Mr. and Mrs. Bell purchased the subject property, located in Matteson, Illinois, by warranty deed on December 1, 2008. The deed is in the name of Mr. and Mrs. Bell.

Mr. and Mrs. Bell live full-time in the house on the subject property. Tr. pp. 13, 16-17, 25; App. Ex. No. 3.

4. The house on the subject property has three stories. The living room, dining room and the kitchen are on the first floor. There are three bedrooms on the second floor, one bedroom for Mr. and Mrs. Bell, one bedroom for the Bell's grandchildren when they visit and one bedroom for visiting spiritual masters or gurus. The basement has a temple room where deity worship is performed. Tr. pp. 7-9, 12; App. Ex. No. 1.
5. Mr. and Mrs. Bell are Priests, associated with Krishna Consciousness and are able to perform "priestly activities" and deity worship. Tr. p. 11.
6. One weekly service is held on the subject property on Saturdays. Participants, other than Mr. and Mrs. Bell, attend this service. Tr. p. 29.

CONCLUSIONS OF LAW:

An examination of the record establishes that Hare Krishna has not demonstrated, by the presentation of testimony, exhibits and argument, evidence sufficient to warrant exempting the subject property from property taxes for tax year 2008. In support thereof, I make the following conclusions.

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 limits 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 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 Property Tax Code which govern the disposition of the instant proceeding are found in Section 200/15-40, “Religious Purposes.”

Section 200/15-40(a) exempts property used exclusively for “religious purposes,” as long as it is not used with a view to profit. Section 15-40(b) exempts property that is owned by churches, religious institutions or religious denominations and that is used in conjunction therewith as housing facilities provided for ministers, 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. “A parsonage, convent or monastery or other housing facility shall be considered under this Section to be exclusively used for religious purposes when persons who perform religious related activities shall, as a condition of their employment or association, reside in the facility.” 35 ILCS 200/15-40.

The above statute allows an exemption for property used “exclusively” for religious purposes. Benedictine Sisters of the Sacred Heart v. Department of Revenue, 155 Ill. App. 3d 325 (2d Dist. 1987). Property satisfies the “exclusive use” requirement of the property tax exemption statutes if it is primarily used for the exempted purpose, even though it may also be used for a secular or incidental purpose. McKenzie v. Johnson, 98 Ill.2d 87 (1983). “Property is generally susceptible of more than one use at a given time and the exemption is determined upon the primary use, and not upon any secondary or incidental use.” People ex rel. Marsters v. Missionaries, 409 Ill. 370, 375 (1951).

The subject property does not qualify for exemption as a “parsonage,” under 35 ILCS 200/15-40(b) because the property is owned by Mr. and Mrs. Bell. Mr. and Mrs. Bell purchased the subject property, located in Matteson, Illinois, by warranty deed on December 1, 2008. Mr. Bell testified that the deed for the subject property is in the name of Mr. and Mrs. Bell. Tr. pp. 13, 16-17, 25; App. Ex. No. 3.

35 ILCS 200/15-40(b) specifically requires that the property be owned by a church, religious institution or religious denomination in order to qualify for exemption as a parsonage. Furthermore, no documentary evidence was admitted showing that Mr. Bell is required to live on the subject property as a condition of his employment or association with Hare Krishna. No documentary evidence was presented showing that Hare Krishna had an independent board of directors or governing body in 2008 that had the authority to order Mr. Bell to reside on the subject property as a condition of his employment or association with Hare Krishna. Without evidence of ownership by Hare Krishna and documentation requiring Mr. Bell to live on the subject property, I am

unable to conclude that the residence is “exclusively” used for religious purposes as a parsonage.

Since the subject property, as a matter of law, is not exempt under 35 ILCS 200/15-40(b), the only other consideration is whether the subject property was exempt for religious purposes in 2008 under 35 ILCS 200/15-40(a). It is clear from the record in this case that, as a matter of law, the subject property does not qualify for exemption under 35 ILCS 200/15-40(a). The subject property has more than one use but the question of whether the subject property is entitled to exemption must be determined from its primary use. The primary use of the subject property in 2008 was as a residence for Mr. and Mrs. Bell. Mr. Bell testified that he and his wife live on the subject property full time. Tr. p. 13.

Based on Mr. Bell’s testimony, I must conclude that the principal and primary use of the subject property is as a residence for Mr. and Mrs. Bell. The subject property is used as a residence for two persons, twenty-four hours/day, seven days/week. Because the primary use of the subject property is as a residence which does not qualify as a parsonage, the primary use of this property is secular. The right to an exemption is determined from a property’s primary use.

Mr. Bell testified that Hare Krishna has one weekly service on Saturdays on the subject property. Participants, other than Mr. and Mrs. Bell, attend this service. Tr. p. 29. No documentary evidence was admitted to support this statement. I cannot recommend an exemption for whatever portion of the residence is used for religious services on Saturday, when the residence is used for secular purposes at other times. The Property Tax Code does not provide for hourly, daily, or incidental, exemptions of property.

Furthermore, I cannot ignore the legislatively mandated requirement that property be “exclusively” used for the exemption claimed. There can be only one primary use of property, and because the primary use of the subject property is secular, the property does not qualify for exemption under 35 ILCS 200/15-40.

WHEREFORE, for the reasons stated above, it is recommended that the Department’s determination which denied the exemption from 2008 real estate taxes should be affirmed and Cook County Parcel identified by P.I.N. 31-15-303-003-0000 should not be exempt from property taxes in 2008.

ENTER:

January 19, 2011

Kenneth J. Galvin
Administrative Law Judge