

PT 08-11

Tax Type: Property Tax

Issue: Religious Ownership/Use

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

WATERMAN PRESBYTERIAN CHURCH,

APPLICANT

Docket No: 07-PT-0090

Real Estate Tax Exemption

**For 2007 Tax Year
P.I.N. 14-16-279-001**

De Kalb County Parcel

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

**Kenneth J. Galvin
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Rev. Peder Carlson, *pro se*, on behalf of Waterman Presbyterian Church; Ms. Paula Hunter, Special Assistant Attorney General, on behalf of the Department of Revenue of the State of Illinois.

SYNOPSIS:

This proceeding raises the issue of whether the subject property, identified by De Kalb County Parcel Index Number 14-16-279-001 (hereinafter the “subject property”), qualifies for exemption from 2007 real estate taxes under 35 ILCS 200/15-40, which exempts, “[a]ll property used exclusively for religious purposes.”

The controversy arises as follows: On May 1, 2007, Waterman Presbyterian Church (hereinafter “Waterman” or “applicant”), owner of the subject property, filed a Real Estate Exemption Complaint for the residence on the subject property with the

Board of Review of De Kalb County (hereinafter the “Board”). The Board reviewed the applicant’s complaint and subsequently recommended to the Illinois Department of Revenue (hereinafter the “Department”) that the exemption be granted.

On September 20, 2007, the Department rejected the Board’s recommendation finding that the property was not in exempt use in 2007. Dept. Ex. No. 1. On November 16, 2007, the applicant filed a timely request for a hearing as to the denial and presented evidence at a formal evidentiary hearing on June 19, 2008, with Rev. Peder Carlson, Pastor of Waterman, testifying. Following a careful review of the record including the transcript, the testimony and the evidence, it is recommended that the subject property be denied an exemption for the 2007 tax year.

FINDINGS OF FACT:

1. Dept. Ex. No. 1 establishes the Department’s jurisdiction over this matter and its position that the subject property was not in exempt use in 2007. Tr. pp. 10-11.

CONCLUSIONS OF LAW:

An examination of the record establishes that Waterman 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 2007. 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 that statute which govern the disposition of the instant proceeding are found in Section 200/15-40(a), which exempts property used exclusively for religious purposes as long as it is not used with a view to profit. Section 200/15-40(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). Housing facilities are exempt from property taxes if: (1) they are “owned by churches or religious institutions or denominations”; and (2) they are used as “housing facilities provided for ministers”; and (3) such ministers reside in the facility “as a condition of employment.” 35 ILCS 200/15-40.

It is undisputed that the subject property is owned by Waterman Presbyterian Church, and that the subject property contains a housing facility for Rev. Peder Carlson, Pastor of Waterman. Dept. Ex. No. 1. The pivotal question to be determined in the instant case is whether Rev. Carlson resides in the residence as a condition of his employment.

Waterman’s PTAX-300-R, “Religious Application for Non-homestead Property Tax Exemption,” states that the minister is not required to live on the property as a condition of his employment. Tr. p. 6. At the June 19, 2008 hearing on the subject property, Rev. Carlson caused to be admitted into evidence his contract with Waterman for the 2007 year. The “Terms of Contract” state that “Housing with half of utilities” is “Provided” to Rev. Carlson. App. Ex. No. 1. “Provide” is defined as “to make available” or to “supply someone with something.” Webster’s New World Dictionary, p. 1083 (3d ed. 1988). I am unable to conclude that making housing available and supplying housing is the same as requiring Rev. Carlson to live in the housing facility as a condition of his

employment. Rev. Carlson did not introduce any documentary evidence, such as board resolutions or church bylaws, proving that he was required to live on the subject property as a condition of his employment.

Property tax exemptions are inherently injurious to public funds because they impose lost revenue costs on taxing bodies and the overall tax base. In order to minimize the harmful effects of such lost revenue costs, and thereby preserve the Constitutional and statutory limitations that protect the tax base, statutes conferring property tax exemptions are to be strictly construed in favor of taxation. People ex rel. Nordland v. Home for the Aged, 40 Ill. 2d 91 (1968). Great caution must be exercised in determining whether property is exempt so that only the limited class of properties meant to be exempt actually receives the exempt status that the Legislature intended to confer. Otherwise, any increases in lost revenue costs attributable to unwarranted application of the religious exemption will cause damage to public treasuries and the overall tax base. 35 ILCS 200/15-40 does not provide an exemption for housing facilities that are “provided” to ministers. 35 ILCS 200/15-40 specifically requires that ministers be required to reside in the housing facility as a condition of their employment. Based on the evidence admitted at the evidentiary hearing I am unable to conclude that Rev. Carlson resides on the subject property as a condition of his employment.

WHEREFORE, for the reasons stated above, it is my recommendation that real estate, identified by De Kalb County P.I.N. 14-16-279-001 shall not be exempt from 2007 real estate taxes.

ENTER:

Kenneth J. Galvin
Administrative Law Judge

July 9, 2008