

PT 08-17

Tax Type: Property Tax

Issue: 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.

**GRACE COMMUNITY CHURCH
ASSEMBLIES OF GOD**

Applicant

Docket # 07-PT-0042

Tax Year 2007

RECOMMENDATION FOR DISPOSITION

Appearances: Robin Gill, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Duane D. Young of LaBarre, Young & Behnke for Grace Community Church Assemblies of God

Synopsis:

Grace Community Church Assemblies of God (“applicant”) filed an application for a property tax exemption for the year 2007 for a parcel of property located in Sangamon County. The applicant contends the property is used exclusively for religious purposes pursuant to section 15-40 of the Property Tax Code (35 ILCS 200/1-1 *et seq.*). The Sangamon County Board of Review recommended that the property be exempt from taxes, and the Department of Revenue (“Department”) disagreed with that decision. The Department determined that the property is not being used exclusively for religious

purposes. The applicant timely protested the Department's decision to deny the exemption, and an evidentiary hearing was held. After reviewing the record, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. The applicant acquired the property in question pursuant to a quitclaim deed dated May 15, 1996. (Dept. Ex. #1, pp. 6-7)
2. The property is vacant with the exception of a shed that is 200 square feet. The property is approximately 7 acres and is located in Springfield, Illinois. (Dept. Ex. #1, pp. 4, 28; Tr. p. 15)
3. An architect drew floor plans for the facility that the applicant intends to build on the property. The plans are dated March 20, 2000. (App. Ex. #1; Tr. p. 12)

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, which 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.

The term “exclusively” refers to the primary purpose for which the property is used. McKenzie v. Johnson, 98 Ill. 2d 87, 98 (1983). It is well-established that property tax exemption provisions are strictly construed in favor of taxation. Chicago Patrolmen’s Association v. Department of Revenue, 171 Ill. 2d 263, 271 (1996). The party claiming the exemption has the burden of proving by clear and convincing evidence that it is entitled to the exemption, and all doubts are resolved in favor of taxation. *Id.*; City of Chicago v. Department of Revenue, 147 Ill. 2d 484, 491 (1992).

The applicant contends that when it first acquired the property, a portion of it was used as farmland, and the property was assessed as farmland. (Tr. p. 9) The applicant then sold an acre of the property to Sojourn Women’s Shelter (“Sojourn”), which is a shelter for abused women and children.¹ (Tr. p. 16) When the acre was sold to Sojourn, the farming no longer occurred. (Tr. p. 31) Before the acre could be sold to Sojourn, however, the city of Springfield required that the whole parcel to be annexed to Springfield. (Tr. p. 21) In order for the property to be annexed, a sewer line had to be extended to the property; the applicant indicated it hired Martin Engineering, at a cost of approximately \$18,000 to \$20,000, to extend the sewer line. (Tr. pp. 11-12) The applicant also hired an attorney, at a cost of approximately \$3,500, to undertake the annexation. (Tr. pp. 22-23) In addition, the applicant hired an architect to prepare plans for the facility that it intends to build on the property. The main building will include a worship center, fellowship hall, and classrooms. Some adjustments to the plans still need

¹ The parcel at issue does not include this one acre because it was sold prior to the filing of the application. (Tr. p. 35)

to be made. (Tr. p. 19) The congregation presently meets at another building. (Dept. Ex. #1, p. 27) For the year 2007, the property was re-assessed as commercial property, which increased the property taxes from \$60 to approximately \$15,000. (Tr. pp. 9-10)

In order for the property to be exempt for 2007, the applicant must have actually used it for an exempt purpose. In Skil Corporation v. Korzen, 32 Ill. 2d 249 (1965), the Supreme Court stated that evidence that property was acquired for an exempt purpose did not eliminate the need for proof of actual use for that purpose. “Intention to use is not the equivalent of use.” Skil at 252. See also Antioch Missionary Baptist Church v. Rosewell, 119 Ill. App. 3d 981 (1st Dist. 1983) (newly acquired property that remained vacant was not actually used for exempt purpose and not entitled to the exemption). The fact that the applicant acquired this property with the intention to build a church on it does not alone qualify the property for an exemption for the year 2007.

The applicant may, however, show that the property was actually used for an exempt purpose if it shows that the property has been adapted and developed for an exempt use. Weslin Properties v. Department of Revenue, 157 Ill. App. 3d 580 (2nd Dist. 1987). The applicant argues that by annexing the property and preparing plans for the facility it has adapted the property for religious use, but it is not clear when these developing activities took place, and the applicant has not supported its arguments with documentary evidence. The evidence does not include documents, other than the architect’s plans that are dated March 20, 2000, to verify when and how the applicant began to adapt the property for religious use. The testimony and the architect’s plans indicate that at least some, if not all of the activities, happened before the year in question. The applicant contends that its records concerning its activities had been stored

in the shed on the property, but a tornado destroyed the shed two years ago, and the documents in it were lost. (Tr. pp. 13-14) The shed was rebuilt within a few days. Nevertheless, the year at issue is 2007, and the only activity that can be considered for this exemption is activity that took place during 2007. See Jackson Park Yacht Club v. Department of Local Government Affairs, 93 Ill. App. 3d 542, 546 (1st Dist. 1981). A tornado that destroyed documents during the year 2006 would not affect the applicant's ability to produce documents to show that it is entitled to the exemption for the year 2007.

The applicant also contends that during 2007 the entire parcel was actually used only for the church and its ministries. (Tr. p. 28) The applicant gave a list of activities that took place on 12 days during 2007.² The applicant's pastor testified that the list was constructed from his calendar, but the calendar was not provided at the hearing. (Tr. pp. 19-20) He also stated that because the land is uneven and some members of the congregation are in wheelchairs or have crutches, the applicant is careful about its use of the property. (Tr. p. 32) The pastor stated that in August the church distributed free school supplies from the property for children who live in the apartments across the street. (Tr. p. 15) The applicant has allowed Sojourn to use the property "several times" for fundraisers. (Tr. p. 16)

² The list shows that on February 28 the pastor had a prayer walk on the property. On March 13 the church leadership had a meeting and a prayer walk. On April 1 the church leadership had another meeting and a prayer walk. On April 28 there was a property development meeting with the leadership and developer. On May 6 there was a prayer walk for the congregation. On May 29 the church leadership had a meeting and a prayer walk. On June 1 there was a property development meeting with the pastor and developer. On June 9 there was leadership and maintenance training with the pastor and deacon candidate. On July 12 the pastor had a prayer walk. On July 25 the church leadership had a meeting and a prayer walk. On August 17 the leadership had a prayer walk, and on September 10 the leadership had a property development meeting. (Dept. Ex. #1, p. 27)

The shed on the property was used to store a tractor and some supplies. (Tr. p. 13) The applicant asserts that the shed has not been used for anything other than church activities but admits that “from time to time” Sojourn stores some things in it, and Sojourn has a key to the shed. (Tr. p. 19) The pastor testified that the shed provides a place for the leadership to meet. Sometimes the shed is used to counsel Sojourn women because the counseling is of a religious nature, and the pastor prefers to conduct the counseling away from Sojourn property. (Tr. pp. 16-17) The applicant claims the property has never been leased, and Sojourn does not pay rent for the use of the property. The applicant has a building fund to which people contribute on a regular basis. (Tr. pp. 24-25)

The applicant must prove by clear and convincing evidence that it is entitled to the exemption (Chicago Patrolmen’s Association, *supra.*), but the pastor’s testimony alone is not sufficient to meet the clear and convincing standard. Exemption provisions are strictly construed, and all doubts must be resolved in favor of taxation. *Id.*; City of Chicago v. Department of Revenue, *supra.* Documentary evidence, such as the pastor’s calendar, church newsletters, bulletins, minutes of meetings, or photographs, is necessary to verify that the property was primarily used for religious purposes. It is unclear from the evidence presented as to how often or how much Sojourn used the property and shed. Financial statements were not presented to substantiate the applicant’s claims. The tornado that destroyed the applicant’s records in 2006 would not have prevented the applicant from presenting records to verify the activity for 2007. The only document given by the applicant to verify its activity on the property was the architect’s plans dated March 20, 2000. Although documents are not necessary to verify every single activity

that took place, some substantiation is necessary to verify that the property was used primarily for religious purposes and not used with a view to profit. Because the applicant did not substantiate its oral evidence, it failed to meet its legal burden of showing clearly and convincingly that it is entitled to the exemption. Therefore, the Department's determination must be upheld.

Recommendation:

For the foregoing reasons, it is recommended that the applicant has not established with clear and convincing evidence that the property was used exclusively for religious purposes during 2007.

Linda Olivero
Administrative Law Judge

Enter: September 17, 2008