

PT 10-01
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.

ISLAMIC FOUNDATION OF PEORIA

Applicant

Docket # 08-PT-0023

Tax Year 2008

RECOMMENDATION FOR DISPOSITION

Appearances: Robin Gill, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Richard V. Laukitis of Dixon, Laukitis & Downing, P.C. for Islamic Foundation of Peoria

Synopsis:

Islamic Foundation of Peoria (“applicant”) filed an application for a property tax exemption for the year 2008 for two parcels of property located in Peoria 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 Peoria County Board of Review recommended that the property receive a partial exemption from April 25, 2008 (the date of purchase) through December 31, 2008. The Department of Revenue (“Department”) disagreed with that decision and denied the exemption. The

applicant timely protested the Department's decision, and an evidentiary hearing was held. Prior to the hearing, the Department agreed that one of the parcels at issue is entitled to the exemption because it is used as a private roadway to the applicant's mosque. (Tr. p. 6) The sole issue presented is whether the remaining parcel was adapted and developed for religious use during 2008. After reviewing the record, it is recommended that this matter be resolved in favor of the applicant.

FINDINGS OF FACT:

1. The applicant owns property located at 823 W. Salaam Drive in Peoria, Illinois. The property was acquired in 2003, and its property index number was 14-05-476-046 ("46"). The property has a mosque (8,200 square feet), a parking lot (76 spaces), and a playground. In 2004, the Department determined this property was exempt from taxes. (Dept. Ex. #1, pp. 8, 14, 18-19; App. Ex. #1, p. 1)
2. Also in 2003, the applicant acquired a parcel with index number 14-05-476-048 ("48"), which is a private roadway that is used to access the mosque. Parcel 48 is included in this exemption application, and the Department has agreed that parcel 48 is entitled to the exemption because it is used to access to the exempt property. (Dept. Ex. #1, pp. 3, 18-19, 27; Tr. p. 6)
3. On April 25, 2008, the applicant purchased another parcel that is adjacent to these parcels. When it was purchased, it was part of a parcel with index number 14-05-476-047 ("47"). (Dept. Ex. #1, pp. 15-17, 27)
4. The applicant subsequently asked the Peoria County Assessor's Office to combine the newly acquired parcel, 47, with the mosque parcel, 46, and the result was a

- new parcel index number, 14-05-476-057 (“57”). This new parcel index number is the subject of this dispute. (Dept. Ex. #1, pp. 2-3, 15-17, 27)
5. When the newly acquired portion of parcel 57 was purchased in April 2008, it was a wooded lot. During 2008, the applicant cleared shrubs and trees from the land. It also planted seeds to grow grass. The applicant did not allow people to walk on the seeded area during 2008 in order to allow the grass to be established. (Dept. Ex. #1, pp. 2, 10; Tr. pp. 11, 15-16, 22-26)
 6. On September 24, 2008, the applicant received an invoice from Beal Landscaping. The invoice is for \$4,200 and is for the final grading and seeding of the lot. (Dept. Ex. #1, p. 21)
 7. In November 2008, the applicant completed its future plans for the parcel. The plans include using a portion of the property for outdoor activities. The plans also include constructing additional buildings, which would result in a total of approximately 24,000 square feet of building space. Furthermore, the plans include an additional 134 parking spaces for a total of 210 parking spaces. (App. Ex. #1; Tr. pp. 13-14)
 8. On January 19, 2009, the applicant received an invoice for \$4,000 from Bennett & Son Tree Service for removing trees. The trees were removed during the end of 2008 and beginning of 2009. (Dept. Ex. #1, p. 20; Tr. p. 23)

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).

In order for the property at issue to be exempt for the year 2008, 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 land was acquired for an exempt purpose does not eliminate the need for proof of actual use for that purpose. Intention to use is not the equivalent of use.” *Id.* 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). In the present case, the fact that the applicant acquired the property with the intention to use it for religious purposes does not alone qualify the property for an exemption for the year 2008.

Nevertheless, the property may be exempt if the applicant shows that the newly acquired property has been adapted and developed for an exempt use. Weslin Properties Inc. v. Department of Revenue, 157 Ill. App. 3d 580 (2nd Dist. 1987). In Weslin Properties, Inc., the court addressed the issue of whether the applicant's activities on the property constituted development and adaptation for charitable use. The court found that as soon as the applicant purchased the property, it began to carry out its intentions to use the property for exempt purposes. The applicant proceeded quickly through the planning and design stages for constructing a medical complex by developing a master site plan and holding several meetings with the architects. The applicant began physical adaptation of the property through landscaping and the construction of berms. It also expended large sums of money in the process. The court concluded that these facts constituted actual adaptation and development for an exempt use. *Id.* at 586.

The reasoning in Weslin Properties, Inc. was followed in Lutheran Church of the Good Shepherd of Bourbonnais v. Department of Revenue, 316 Ill. App. 3d 828 (3rd Dist. 2000), which concerned a religious exemption. In 1996, the church acquired property that was adjacent to land that contained its worship facility, and crops were growing on the property. After the crops were harvested in late 1996, nothing was done to the subject property until August 1997 when weeds that had overgrown the property were mowed. In November 1997 the property was tilled in preparation for planting grass seed, but no seeding took place due to unfavorable weather conditions. The church did not plant

crops on the land in 1997 because it intended to use the property as an extension of its existing yard area. *Id.* at 829-830.

In finding that the property was entitled to an exemption for the year 1997, the court stated that the property was “undergoing a process of change from the raw or natural state” in order to be converted for use as additional church yard or recreation area. *Id.* at 833 (quoting People ex rel Pearsall v. Catholic Bishop of Chicago, 311 Ill. 11, 15 (1924)). The court acknowledged that the mowing and tilling that were done by the church during 1997 were a part of this process, as was the decision to not plant crops. The court found that this activity was more than mere planning and constituted actual physical use of the property. *Id.*

In the present case, the applicant has similarly adapted the property for religious use. The applicant presented invoices showing that it cleared trees from the property, graded the lot, and planted seeds to grow grass. The applicant did not let people to walk on the property in order to allow the grass to be established. The applicant intends to use a portion of the property for outdoor activities and have a building and a parking lot on the remainder. Because the applicant’s activities were more than mere planning and included physical adaptation of the property such as removing trees, grading the lot, and seeding it, the portion of the property that was acquired in April 2008 should be exempt from taxes.

Recommendation:

For the foregoing reasons, it is recommended that the parcel with index number 14-05-476-048 be exempt from taxes for the year 2008. The portion of the parcel with index number 14-05-476-057 that was purchased on April 25, 2008 should be exempt

from taxes beginning April 25, 2008 through December 31, 2008. The remaining portion of the parcel with index number 14-05-476-057, which has the mosque, was previously determined to be exempt.

Linda Olivero
Administrative Law Judge

Enter: January 13, 2010