

PT 10-14

Tax Type: Property Tax

Issue: Religious Ownership/Use

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

**BEREAN FUNDAMENTAL
BAPTIST CHURCH,
APPLICANT**

Docket No: 10-PT-0025

Real Estate Tax Exemption

**For 2009 Tax Year
P.I.N. 04-20-405-070**

Lake County Parcel

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

**Kenneth J. Galvin
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Pastor Gil Aranda, *pro se*, on behalf of Berean Fundamental Baptist 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 Lake County Parcel, Property Index Number 04-20-405-070 (hereinafter the “subject property”), qualifies for exemption from 2009 real estate taxes under 35 ILCS 200/15-40, which exempts “all property used exclusively for religious purposes.”

The controversy arises as follows: On July 29, 2009, Berean Fundamental Baptist Church (hereinafter “Berean” or “applicant”), owner of the subject property, filed a “PTAX-300-R,” Real Estate Exemption Complaint, with the Board of Review of Lake County (hereinafter the “Board”), for the residence on the subject property. The Board reviewed the applicant’s Complaint and subsequently recommended to the Illinois Department of Revenue (hereinafter the “Department”) that a partial year exemption be granted.

On December 10, 2009, the Department rejected the Board’s recommendation finding that the subject property was not in exempt use in 2009. Dept. Ex. No. 1. On February 9, 2010, Berean filed a timely request for a hearing as to the denial and presented evidence at a formal evidentiary hearing on September 9, 2010, with Gil Aranda, Pastor of Berean, and Rodolfo David 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 2009 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 2009. Tr. pp. 9-10; Dept. Ex. No. 1.
2. On Berean’s PTAX-300-R, in response to the question, “[I]s the minister or other official required to reside in the property as a condition of employment or association,” Pastor Aranda answered “no.” Tr. pp. 6-7; Dept. Ex. No. 1.

3. Pastor Aranda testified that in 2009, there was no requirement that the Pastor live in the parsonage. “But in our practice, it’s assumed that I live in the parsonage.” Tr. p. 8.

CONCLUSIONS OF LAW:

An examination of the record establishes that Berean 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 2009. 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(b) which 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(b). According to the statute, 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(b).

It is undisputed that the subject property is owned by Berean. Dept. Ex. No. 1. The pivotal question to be determined then in the instant case is whether Pastor Aranda resided in the residence as a condition of his employment in 2009, as required by the religious exemption statute. On Berean’s PTAX-300-R, in response to the question “[I]s the minister or other official required to reside in the property as a condition of

employment or association,” Pastor Aranda answered “no.” Tr. pp. 6-7; Dept. Ex. No. 1. Pastor Aranda testified that in 2009, there was no written requirement that he live in the subject property. According to his testimony, in “our practice, it’s assumed that I live in the parsonage.” Tr. p. 8.

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(b) specifically mandates that ministers be required to reside in the housing facility as a condition of their employment. Without documentary evidence, I cannot conclude that Pastor Aranda is required to live on the subject property because of Berean’s “practice.” Based on the testimony and evidence admitted at the evidentiary hearing, I am unable to conclude that Pastor Aranda resided on the subject property as a condition of his employment in 2009, as required by the statute.

WHEREFORE, for the reasons stated above, it is my recommendation that real estate, identified by Lake County P.I.N. 04-20-405-070, shall not be exempt from 2009 real estate taxes.

ENTER:

October 25, 2010

Kenneth J. Galvin
Administrative Law Judge