

PT 10-15

Tax Type: Property Tax

Issue: Religious Ownership/Use

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

**BAKER MEMORIAL UNITED
METHODIST CHURCH,
APPLICANT**

v.

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

10-PT-0011 (09-45-65)

Real Estate Tax Exemption

**For 2009 Tax Year
P.I.N. 09-27-387-002**

Kane County Parcel

**Kenneth J. Galvin
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Mr. Gary V. Johnson, Camic Johnson, Ltd. on behalf of Baker Memorial United Methodist 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 a parking lot, identified by Kane County Parcel Index Number 09-27-387-002, qualifies for exemption from 2009 real estate taxes under 35 ILCS 200/15-40, which exempts property used exclusively for religious purposes and not used with a view to profit, and 35 ILCS 200/15-125 which exempts parking areas, not leased or used for profit, and owned by a religious institution.

The controversy arises as follows: On July 1, 2009, Baker Memorial United Methodist Church (hereinafter "Baker") filed a Real Estate Exemption Complaint for the subject property

with the Board of Review of Kane County (hereinafter the “Board”). The Board reviewed Baker’s complaint and subsequently recommended to the Illinois Department of Revenue (hereinafter the “Department”) that a full year exemption be granted. On November 13, 2009, the Department denied the exemption finding that the property was not in exempt use. Dept. Ex. No. 1. On January 11, 2010, Baker protested the denial and requested a hearing in this matter.

The evidentiary hearing was held on September 9, 2010, with testimony from Mark Armstrong, Chairperson of Baker’s Board of Trustees and Supervisor of Assessments for Kane County, Rita Tungare, Director of Community Development for the City of St. Charles, Donald DeWitte, Mayor of St. Charles, and Ronni Ver Boom, Senior Pastor of Baker. Following submission of all evidence and a careful review of the record, it is recommended that the Department’s denial of an exemption for the parking lot for the 2009 assessment year be affirmed.

FINDINGS OF FACT:

1. Dept. Ex. No. 1 establishes the Department’s jurisdiction over this matter and its position that Kane County P.I.N. 09-27-387-002 was not in exempt use during the 2009 assessment year. Tr. p. 10; Dept. Ex. No. 1.
2. Baker is located at 307 Cedar Avenue in St. Charles. The parking lot at issue, which has twelve parking spaces, is located at 207 Cedar Avenue. Baker owns three parking lots, including the subject property. The subject parking lot connects to one of Baker’s other parking lots. Tr. pp. 16-17, 21-22, 70.
3. Baker purchased the subject property by warranty deed on January 5, 2007. Tr. pp. 26-27; App. Ex. No. 1.

4. When Baker was built in 1954, it had a capacity of 396 sanctuary seats but no off-street parking. As property has been offered for sale near Baker, Baker has acquired it either for church purposes or parking purposes. Tr. pp. 18, 23.
5. The subject property is in an historic district. When the property was offered for sale, there was a house on it. Mr. Armstrong appeared before the Historic Preservation Commission which approved the razing of the house for the building of the parking lot. Tr. pp. 19-21, 49-50; App. Ex. No. 5.
6. Baker entered into a lease agreement with the City of St. Charles for the parking lot. The lease is for a ten year period ending June 4, 2017. The City agreed to pay Baker “not more than \$15,000” for demolition of the existing house on the lot. Tr. pp. 37-38, 48, 61; App. Ex. No. 2.
7. According to the lease, Baker has use of the parking lot between the hours of 6:00 a.m. and 1:00 p.m., Sundays, and for scheduled special events. “Said special events shall be restricted to no more than 6 hours per use and not more than 12 times per calendar year.” Baker must give the City 14 days notice of the special events. Tr. pp. 41-42, 57-58, 61-62, 72-73; App. Ex. No. 2.
8. The City has the right to use the parking lot at all other times. “Said right shall include the right to provide parking on a public, no fee basis, or to charge a fee for parking purposes under the conditions and terms as [the] City shall in its sole discretion decide.” The City shall “further have the right to regulate the use, parking and traffic” on the lot. The City of St. Charles is in need of off-street parking because of its “dense environment.” Baker can use the parking lot while the lot is available for public parking. Tr. pp. 41-43, 53, 57-58, 63-65; App. Ex. No. 2.

9. The City, at its own cost, provides sweeping and snow plowing, power for the lights and maintains and repairs the parking lot “in accordance with its usual and customary standards.” If there is a snowstorm on Saturday nights, Baker hires someone to plow the lot to make sure parking is available for Sunday morning. Tr. pp. 37-38, 61; App. Ex. No. 2.

CONCLUSIONS OF LAW:

An examination of the record establishes that Baker has not demonstrated, by the presentation of testimony, exhibits and argument, evidence sufficient to warrant exempting P.I.N. 09-27-387-002 from property taxes for the 2009 assessment year. 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). Consequently, there is a presumption that no exemption is intended. Rotary International v. Paschen, 14 Ill. 2d 480 (1958). Furthermore, the party claiming the exemption has the burden of showing that the property clearly falls within the statutory exemption. People ex rel. Nordlund v. Home for the Aged, 40 Ill. 2d 91 (1968). Additionally, the exemption provisions must be strictly construed against exemption. Methodist Old Peoples Home v. Korzen, 39 Ill. 2d 149 (1968).

In accordance with its constitutional authority, the General Assembly enacted section 15-40 of the Property Tax Code which exempts “[a]ll property used exclusively for religious purposes...” and not used with a view to profit and section 15-125, which exempts parking areas, owned by a religious institution, not leased or used for profit, and used as a part of a use for which an exemption is provided in the Property Tax Code. 35 ILCS 200/15-40 and 35 ILCS 200/15-125, respectively. An applicant seeking a property tax exemption for its parking area must show three factors: (1) ownership of the parking area by an exempt institution, (2) that the parking area is not leased or used for profit, and, (3) that the parking area is used as part of a use for which exemption is provided by statute. Mount Calvary Baptist Church, Inc. v. Zehnder, 302 Ill. App. 3d 661 (1st Dist. 1998).

The Department’s denial of the exemption for P.I.N. 09-27-387-002 stated that “the property is not in exempt use.” Dept. Ex. No. 1. I conclude from this denial that the Department found the parking lot to be owned by an exempt religious organization. In fact, Baker purchased the subject property by warranty deed on January 5, 2007. Tr. pp. 26-27; App. Ex. No. 1.

The parking lot at issue contains 12 spaces. Tr. p. 21. Baker’s parking lots are used for parking for Sunday worship, Boy Scouts and Alcoholics Anonymous meetings, tutoring for refugee children, tutoring for children with attention deficit problems, choir rehearsals, concerts,

committee meetings, confirmation class, readings groups, bible study groups, women's groups, funerals, memorial services, and weddings. Tr. pp. 28-30, 73-76.

There was extensive testimony at the hearing regarding St. Charles' parking requirements for churches. St. Charles' requires that a church must have one parking space for every three sanctuary seats. Baker is required to have 132 parking spaces equal to 1/3 of their 396 sanctuary seats. Of these 132 required parking spaces, St. Charles allows 25% (33 spaces) to be filled by on-street parking. Baker needs 99 off-street parking spaces to comply with the St. Charles' zoning ordinance. With Baker's purchase of the subject property, and including Baker's other two parking lots, Baker now has 86 of the 99 required parking spaces. Tr. pp. 23-27, 54-55. The testimony regarding the zoning goes to the legal use of the subject property and shows that the subject parking lot can, in fact, be used for parking. However, Baker's compliance or noncompliance with St. Charles' parking requirements does not impact on the exemption claimed by Baker. That exemption is governed by the provisions of the Property Tax Code.

And Baker has failed to prove that its requested exemption falls within the statutory exemption for parking lots as provided for by the Property Tax Code. I am unable to conclude from the testimony that the parking lot is not leased or used for profit. The "Lease Agreement for Parking Lot" between Baker and St. Charles states that the City "agrees to reimburse the Church not more than \$15,000 for removal of the existing buildings including footings/foundation and backfill with impacted stone basement void." "This reimbursement would be paid at the time the work is completed and documentation is presented detailing the cost." App. Ex. No. 2. Mr. Armstrong testified that the City "contributed" \$15,000 for the demolition of the house" that was on the lot when Baker purchased the property. Tr. p. 38.

As the testimony and the Lease Agreement indicate, the City paid \$15,000 to Baker toward construction of the parking lot. No documentary evidence was offered by Baker showing how the City accounted for this \$15,000 “contribution.” Additionally, there was no testimony at the hearing that the City had any ownership interest in the parking lot. It is reasonable to conclude then that the \$15,000 payment from the City to Baker was rental for the use of the parking lot for public parking purposes, with the payment being amortized over the 10 year term of the lease. If the \$15,000 payment went toward demolition of the building on the lot, rather than as rent for the lot, I would still conclude that Baker was leasing the lot for profit. The “profit” for Baker is that the City of St. Charles helped to offset Baker’s construction costs for the parking lot, without gaining any ownership interests, thereby increasing Baker’s equity interest in the subject property. Accordingly, I am unable to determine from the record that the \$15,000 payment by the City of St. Charles to Baker does not constitute leasing or using the subject property “for profit,” and this use is sufficient to deny an exemption under 35 ILCS 200/15-125.

35 ILCS 200/15-40 exempts property “used exclusively” for religious purposes as long as it is not used with a view to profit.¹ This section of the 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). 35 ILCS 200/15-125 extends the exemption to parking areas not leased or used for profit, owned by a religious institution which meets the qualifications for exemption, when used as part of a use for which an exemption is provided by the Property Tax Code.

¹ The “Lease Agreement for Parking Lot” allows the City to charge a fee for parking purposes “under the conditions and terms as the City in its sole discretion shall decide.” App. Ex. No. 2. This provisions forces me to conclude that the parking lot is used “with a view to profit,” a use proscribed by 35 ILCS 200/15-40. Mayor DeWitte testified that the City does not currently charge for parking in any City-owned lots. It is possible, however, that the City’s finances could change tomorrow with the City charging for public parking on the subject lot, while Baker enjoys the tax exemption for that same lot that it is requesting from this tribunal.

Clearly, then, whether property is exempt under these provisions is determined by its primary use. “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. Masters v. Missionaries, Inc., 409 Ill. 370 (1951). Property satisfies the exclusive-use requirement of the property tax exemption statutes if it is primarily used for the exempted purpose. McKenzie v. Johnson, 98 Ill. 2d 87 (1983). According to the Lease Agreement, Baker has use of the parking lot between the hours of 6:00 a.m. and 1:00 p.m., Sundays, and for scheduled special events. “Said special events shall be restricted to no more than 6 hours per use and not more than 12 times per calendar year.” Baker must give the City 14 days notice of the special events. Tr. pp. 41-42, 57-58, 61-62, 72-73; App. Ex. No. 2. Baker has use of the property, then, for 64 days consisting of 52 Sundays and 12 special events. The City has the right to use the parking lot at all other times, which consists of 301 days each year. “Said right shall include the right to provide parking on a public, no fee basis, or to charge a fee for parking purposes under the conditions and terms as [the] City shall in its sole discretion decide.” The City shall “further have the right to regulate the use, parking and traffic” on the lot. App. Ex. No. 2.

I must conclude from the record in this case that the primary use of the parking lot is for public parking purposes. Baker has the right to use the parking lot for 64 days. The City has the right to use the parking lot for the other 301 days per year and it also has the right to regulate the use, parking and traffic on the lot and to charge fees for parking. Anyone parking in the lot during the City’s 301 regulated days of use is parking there because the City has let them park there. They are not necessarily parking there for any religious purpose. There was testimony that Baker can use the parking lot while the lot is available for public parking. Tr. p. 58. If church members are using the lot on the City’s 301 days of use, they are using it as members of

the public because the lot is open for public use at that time and the City is allowing it to be used for public use at that time. There is no evidence in the record that the City has granted Baker priority for use of the parking lot during the City's 301 days of use. It is entirely reasonable to conclude that a driver could need a parking space for a wedding or a funeral at Baker during the City's 301 days of use and find that the parking lot at issue is filled with cars of "public" parkers. The exemption requested by Baker is based on the primary use of the property. I conclude from the record that the primary use of the parking lot at issue is for public parking, with religious use for parking being secondary and incidental.

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 and parking lot exemptions, will cause damage to public treasuries and the overall tax base.

WHEREFORE, for the reasons stated above, I recommend that the Department's determination of November 13, 2009 which denied an exemption for Kane County P.I.N. 09-27-387-002 should be affirmed and that the subject property should not be exempt from property taxes for the 2009 assessment year.

ENTER:

November 8, 2010

Kenneth J. Galvin
Administrative Law Judge