

PT 13-05

Tax Type: Property Tax

Tax Issue: Religious Ownership/Use

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

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<b>In re</b>	)	Docket Nos.	11-PT-0006
<b>2010 Exemption Application of</b>	)		10-56-96
<b>LIFE ABUNDANT</b>	)	PIN	20-31-400-007-0040
<b>OUTREACH, INC.</b>	)	John E. White,	
	)	Administrative Law Judge	

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**RECOMMENDATION FOR DISPOSITION**

**Appearances:** Reverend Ray Martin appeared *pro se* for the Life Abundant Outreach, Inc.; Marc Muchin, Special Assistant Attorney General, appeared for the Illinois Department of Revenue; David Mellem, Assistant State's Attorney, McHenry County, appeared for Intervener, McHenry County Board of Review.

**Synopsis:**

This matter involves Life Abundant Outreach, Inc.'s (Life or Applicant) Religious Application for Non-Homestead Property Tax Exemption for a parcel of property situated in McHenry County, for 2010. The issue is whether Life is entitled to a tax exemption for that property pursuant to § 15-40 of Illinois' Property Tax Code (PTC), because it is being used exclusively for religious purposes.

The hearing was held at the Illinois Department of Revenue's (Department) offices in Chicago. The parties stipulated to certain evidence. In addition, Life offered the testimony of Ray Martin (Martin), its founder and president, and of his wife, Janice Martin (Ms. Martin). I have reviewed the evidence, and I am including in this recommendation findings of fact and conclusions of law. I recommend that the Director finalize the Department's denial of Life's application, and that the property remain on the tax rolls for 2010.

**Findings of Fact:**

1. Life owns the property (Property), which has a property inventory number (PIN) of 20-31-400-007-0040, and which is situated in McHenry County, Illinois. Applicant Ex. 2, p. 2 (copy of warranty deed); Hearing Transcript (Tr.) pp. 47-49 (Martin).
2. The Property consists of approximately 4.6 acres of land that is improved with a one-story, single family residence of about 1,700 square feet. Department Ex. 2 (copy of completed and filed form PTAX-300-R, Religious Application for Non-Homestead Property Tax Exemption — County Board of Review Statement of Fact).
3. Life applied for a religious exemption for the Property for 2010. Department Ex. 2.
4. The McHenry County Board of Review (McHenry Board) recommended that Life's exemption application be denied. Department Ex. 2, p. 2.
5. The Department denied Life's exemption application. Department Ex. 1 (copy of Department's denial).
6. The McHenry Board intervened in Life's protest of the Department's Denial.
7. The parties entered into the following agreement in the pre-hearing order:

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3. The parties agree and stipulate that the documents referred to in 09-PT-0088 and admitted into evidence therein shall be admitted into evidence as evidence in this case.

4. The parties further agree and stipulate that the hearing in this cause shall be limited to evidence that shows a change in the use of the subject property or the character of the entity in title to the subject property.

5. The parties further agree the hearing officer shall decide the case based on the evidence stipulated to and the evidence submitted under the limitation in paragraph 4.

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Pre-Hearing Order.

8. The contested case referred to in the parties' Pre-Hearing Order involved Life's application for a property tax exemption for the same Property for a prior assessment year. The Department's administrative decision in that prior case is viewable at the

Department's web site. <http://tax.illinois.gov/LegalInformation/Hearings/pt/PT11-11.pdf> (hereafter, 2009 Agency Decision).

9. Based on the parties' written stipulation regarding the evidence in this matter, I take notice of the findings of fact made in the 2009 Agency Decision, which were based on such exhibits. Tr. p. 46 (advising that notice could be taken of the findings of fact in the 2009 Agency Decision).
10. The substantive findings of fact made in the 2009 Agency Decision are as follows:

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2. The subject property, 4.6 acres, is located in Barrington and improved with a one story residence. Reverend Martin and his wife live in the residence on the subject property. Tr. pp. 12, 45, 73; App. Ex. No. 7.
3. Life Abundant operates a Christian church, "Word of Faith Cathedral," located at 7048 South Western Avenue in Chicago. The church's congregation lives mainly in the south side of Chicago and northern Indiana. Tr. pp. 35, 94.
4. The subject property is located approximately 48 miles from Word of Faith Cathedral. Tr. p. 89.
5. Life Abundant's Bylaws state, *inter alia*, that:
  - A. Life Abundant was started and founded by Evangelist Ray Martin in order to spread the Gospel of Jesus Christ by preaching in churches, tent revivals and auditorium crusades.
  - B. Evangelist Ray Martin is president of the corporation; Janice M. Martin, Ray Martin's wife, is vice president, secretary and treasurer; Rev. Deborah Colon, Christina DiJohn and Rev. David Ray Crawford Martin are board members.
  - C. "At the time of acquiring The Word of Faith Cathedral in June, 1986, Evangelist Ray Martin was voted in as Bishop, Pastor [not required to be at the Church location each time services are being conducted because Evangelist Ray Martin's calling is to be a Traveling Evangelist] by the congregation for the rest of his life."
  - D. "Life Abundant Outreach, Inc. and its board members require that Minister, President Evangelist Ray and Jan Martin live in the parsonage, housing facility as a condition of their employment."
  - E. "Unless otherwise changed, Ray and Janice Martin, or either of them, shall have the authority to take any action on behalf of the corporation and sign any contracts or all other documents including mortgages or promissory notes." App. Ex. No. 9.
6. Life Abundant's Bylaws are signed by "Ray Martin" and "Janice M. Martin" and are noted as "approved by rest of board by phone" on November 25, 2008. App. Ex. No. 9.

2009 Agency Decision, pp. 2-3.

### **Facts Regarding Life's Operations**

11. Martin founded and incorporated Life to be the legal entity through which he could follow his calling to be a travelling evangelist. *See* Tr. pp. 31-34 (Martin); 2009 Agency Decision, pp. 2-3.
12. During 2010, Martin was Life's president and Martin's wife, Janice Martin (Ms. Martin), was its vice president, secretary and treasurer. 2009 Agency Decision, p. 3 (finding of fact no. 5).
13. Martin testified that the members of Life's board of directors had changed in about July 2012. Tr. pp. 30-31 (Martin). Prior to that, and during the year at issue, Life's board was composed of Martin's wife, and his three children, who are Deborah Colon, Christina DiJohn and David Ray Crawford Martin. Tr. p. 37 (Martin); 2009 Agency Decision, p. 3 (finding of fact no. 5).
14. Life's board included in its bylaws the requirement that the Martins reside at the Property, because Martin was advised by counsel that such a requirement was necessary to obtain a tax exemption for the Property. Tr. pp. 37-39 (Martin).
15. Life also owns real property that is situated in the city of Chicago, at 7048 South Western Avenue, which houses a church called the Word of Faith Cathedral (hereafter, the Chicago church). 2009 Agency Decision, p. 2 (finding of fact no. 3); Tr. p. 28 (Martin). After Life acquired the property that houses the Chicago church, the Chicago church made Martin a pastor and bishop of the church, for life. 2009 Agency Decision, p. 2 (finding of fact no. 3).
16. In anticipation of hearing, Martin prepared a summary of Life's revenues and expenses during 2010, which was offered and admitted as Applicant Exhibit 1. Applicant Ex. 1; Tr. pp. 41-44, 47 (Martin).

17. The Life bylaws admitted at the hearing held in the 2009 Agency Decision remained in effect during the year at issue. Tr. pp. 29-30 (Martin).

### **Facts Regarding the Primary Use of the Property**

18. The Martins reside at the Property, and did so throughout 2010. Department Ex. 2; Tr. pp. 28-29 (Martin).

19. About once a week during the year at issue, Ms. Martin held bible study at the Property with about four or five women who lived in the neighboring Crystal Lake area. Tr. pp. 34-36 (Ms. Martin). None of the congregation from the Chicago church attended any bible study sessions held at the Property. *Id.*, p. 36.

### **Conclusions of Law:**

#### **Issues and Arguments**

The Department denied Life's exemption application after determining that the Property was not in exempt use. Department Ex. 1. On Life's behalf, Martin argues that the Property is being used primarily for religious purposes since it is owned by Life, since Martin is an evangelist who is required to live on the Property, and since the Property is not being leased or used with a view toward profit. Tr. pp. 82-84 (Martin, closing argument). Martin also asserts a detrimental reliance argument. This argument is based on Martin's testimony that, for approximately 20 years prior to the date when Life acquired the Property, the State of Illinois had exempted other property that Life owned and which was used as the Martin's family residence. Tr. pp. 5-10 (Martin). Martin argued that, if he had known that the Department would begin to deny a religious exemption for property Life owned, and which was used as his family's residence, Life would have never purchased the Property. Tr. pp. 5-10, 86-87 (Martin).

#### **Analysis**

Article IX of the 1970 Illinois Constitution generally subjects all real property to

taxation. Eden Retirement Center, Inc. v. Department of Revenue, 213 Ill. 2d 273, 285, 821 N.E.2d 240, 247 (2004). Article IX, § 6 permits the legislature to exempt certain property from taxation based on ownership and/or use. Ill. Const. Art. IX, § 6 (1970). One class of property that the legislature may exempt from taxation is property used exclusively for religious purposes. Ill. Const. Art. IX, § 6 (1970). For purposes of Article IX, § 6 of the Illinois Constitution and Illinois' tax statutes, the term "exclusively" means "primarily." People ex rel. Nordlund v. Assoc. of the Winnebago Home for the Aged, 40 Ill. 2d 91, 101, 237 N.E.2d 533, 539 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430, 435, 507 N.E.2d 141, 145 (1<sup>st</sup> Dist. 1987).

Pursuant to the authority granted under the Illinois Constitution, the General Assembly enacted § 15-40 of the PTC, which provides, in pertinent part:

§ 15-40. Religious purposes, orphanages, or school and religious purposes.

(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.

(b) Property that is owned by

- (1) churches or
- (2) religious institutions or
- (3) religious denominations

and that is used in conjunction therewith as housing facilities provided for ministers (including bishops, district superintendents and similar church officials whose ministerial duties are not limited to a single congregation), 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 also qualifies for exemption.

A parsonage, convent or monastery or other housing facility shall be considered under this Section to be exclusively used for religious purposes when the persons who perform religious related activities shall, as a condition of their employment or association, reside in the facility.

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35 ILCS 200/15-40.

Statutes granting tax exemptions must be construed strictly in favor of taxation,

and the party claiming an exemption has a heavy burden of proving clearly and conclusively that the property in question falls within both the constitutional authorization and the terms of the statute under which the exemption is claimed. Provena Covenant Medical Center v. Department of Revenue, 236 Ill. 2d 368, 388, 925 N.E.2d 1131, 1144 (2010); *see also* In the Matter of Jones, 285 Ill. App. 3d 8, 13, 673 N.E.2d 703, 706 (3<sup>rd</sup> Dist. 1996) (clear and convincing evidence defined “as the quantum of proof which leaves no reasonable doubt in the mind of the fact finder as to the veracity of the proposition in question.”).

Here, Life owns the Property, and Martin is Life’s founder and president. Applicant Ex. 2, p. 2; 2009 Agency Decision, p. 3. Life is the entity that requires Martin to reside on the Property. 2009 Agency Decision, p. 3. During 2010, Life’s board of directors consisted of Ms. Martin, and the Martin’s three grown children. Tr. pp. 29-30, 37-39 (Martin). Martin testified that Life’s directors required him and Ms. Martin to reside on the Property after he told those directors (his family) that the law required Life to do so, to obtain an exemption for the Property. Tr. p. 39 (Martin).

Life also owns another property that is situated in the city of Chicago, about 48 miles away from the Property. 2009 Agency Decision, p. 2. The Chicago church occupies part of that Chicago property. *Id.*; Tr. p. 28 (Martin). After Life acquired the property that the Chicago church occupies, the Chicago church made Martin a pastor and bishop of the church, for life. 2009 Agency Decision, p. 3. Life’s bylaws make clear that the association between Martin and the Chicago church does not require Martin to regularly attend or conduct services at the Chicago church. *Id.* There is no evidence that the Chicago church requires Martin to reside on the Property that is situated in McHenry County.

Further, Life offered no evidence to show that the Property is used in conjunction with the Chicago church. *See* 35 ILCS 200/15-40(b); McKenzie, 98 Ill. 2d at 97-100, 456

N.E.2d at 78-79. There is no evidence that any of the Chicago church's congregation was ever physically present on the Property in 2010. Ms. Martin testified that no one from the Chicago church ever attended the occasional bible study sessions she held there, with women who lived in neighboring Crystal Lake. Tr. p. 36 (Ms. Martin).

All of the evidence shows that the Property was actually and primarily used as the Martin's personal residence during 2010. Department Ex. 2; Tr. pp. 28-29 (Martin). The enjoyment of property as a residence is a personal and private use that ordinarily predominates over any other use of the property. See McKenzie v. Johnson, 98 Ill. 2d 87, 97, 456 N.E.2d 73, 78 (1983).

McKenzie involved a taxpayer's challenge to the Illinois General Assembly's 1957 amendments to the PTC to allow an exemption for property used by a church or religious institution as a residence for certain affiliated individuals, commonly called parsonages. *Id.* The McKenzie court upheld the constitutionality of the provision granting an exemption for a parsonage, reasoning as follows:

In essence McKenzie argues that our cases hold that a parsonage, by its very nature, can never be used exclusively for religious purposes because in every case its residential character must predominate over any other religious uses of the property. (*Cf. People ex rel. Carson v. Muldoon* (1922), 306 Ill. 234, 239, 137 N.E. 863 ("it is settled that [a parsonage] is not exempt").) Under this view the language referring to parsonages was added by the legislature to section 19.2 solely to encourage public officials to approve exemptions for parsonages, which exemptions, McKenzie claims, would violate the Constitution as it is interpreted by this court.

This court has long held that property satisfies the exclusive-use requirement of the property tax exemption statutes if it is *primarily* used for the exempted purpose; "if property is devoted, in a primary sense, to a religious purpose, the fact that it is incidentally used for secular purposes will not destroy the exemption \*\*\*." (*First Congregational Church v. Board of Review* (1912), 254 Ill. 220, 224, 98 N.E. 275.) In *First Congregational Church v. Board of Review*, however, the parsonage was denied an exemption even though it was used extensively for religious services and instruction and for the pastor's offices. Three justices filed a lengthy dissent in that case observing:

"A church building for public worship is essential to the successful carrying out of the work of the church, and a pastor or priest is also necessary for efficient work. \*\*\* The evidence in this case is that the work of the church cannot be carried on efficiently without the

constant care and attention of the pastor. The parsonage was paid for with contributions made by the church congregation. It was erected for the benefit it would be in promoting the work of the church and not for the benefit of the pastor. There is nothing in the constitution or statute which limits church property that may be exempted from taxation to that necessarily used for public worship. The limitation is to property exclusively or primarily provided and used for religious purposes.” 254 Ill. 220, 229-31, 98 N.E. 275 (Farmer, J., Carter, C.J., and Vickers, J., dissenting).

The extremely narrow construction of primary religious use, embraced by the cited cases, is out of step with more recent Illinois authority on tax exemptions, and these cases do not establish that parsonages may never be used exclusively -- that is primarily -- for religious purposes. For example, in *MacMurray College v. Wright* (1967), 38 Ill. 2d 272, 230 N.E.2d 846, this court held that an exemption of school property “will be sustained if it is established that the property is primarily used for purposes which are reasonably necessary for the accomplishment and fulfillment of educational objectives, or efficient administration, of the particular institution.” (38 Ill. 2d 272, 278, 230 N.E.2d 846, see also *Locust Grove Cemetery Association v. Rose* (1959), 16 Ill. 2d 132, 139-42, 156 N.E.2d 577.) In *MacMurray College*, this court held that faculty and staff residences were not reasonably necessary for carrying out the school’s educational purposes because it was not established that “any of the faculty or staff members \*\*\* were required, because of their educational duties, to live in these residences, or that they were required to or did perform any of their professional duties there.” 38 Ill. 2d 272, 279, 230 N.E.2d 846.

Under the *MacMurray* standard a parsonage qualifies for an exemption if it reasonably and substantially facilitates the aims of religious worship or religious instruction because the pastor’s religious duties require him to live in close proximity to the church or because the parsonage has unique facilities for religious worship and instruction or is primarily used for such purposes. Given that residence facilities have, on occasion, qualified for exemption from taxation under the school exemption (see *People ex rel. Goodman v. University of Illinois Foundation* (1944), 388 Ill. 363, 368, 58 N.E.2d 33 (student dormitories on university campus); *Monticello Female Seminary v. People* (1883), 106 Ill. 398, 400 (house occupied by superintendent of grounds at seminary); *People ex rel. Pearsall v. Catholic Bishop* (1924), 311 Ill. 11, 13-14, 142 N.E. 520 (gardener’s residence, archbishop’s summer home and a student dormitory at seminary); *People ex rel. Hesterman v. North Central College* (1929), 336 Ill. 263, 266, 168 N.E. 269 (student dormitories at college)), we cannot say that a parsonage could never qualify for exemption as property used exclusively for religious purposes solely because it is also used for residential purposes. (See generally *Taxation: Exemption of Parsonage or Residence of Minister, Priest, Rabbi or Other Church Personnel*, Annot., 55 A.L.R.3d 356, 378-79 (1974). Whether a particular parsonage may be entitled to exemption turns on the evidence showing how the parsonage is being used, but the language exempting parsonages in section 19.2 is not unconstitutional on its face.

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McKenzie, 98 Ill. 2d at 97-100, 456 N.E.2d at 78-79.

For purposes of this case, the principal to be gleaned from McKenzie, and from its consideration of the MacMurray standard, is that, if property used for residential purposes is to be considered used primarily for religious purposes, the residency must be incidental to some primary, religious use of the property by an entity other than the actual resident. *See id.*; *see also, e.g., Evangelical Alliance Mission v. Department of Revenue*, 164 Ill. App. 3d 431, 517 N.E.2d 1178 (2d Dist. 1987).

Evangelical Alliance involved an application for a religious exemption for property owned by The Evangelical Alliance Mission (TEAM), for property that was improved with TEAM's administrative offices and an adjacent residential complex. Evangelical Alliance, 164 Ill. App. 3d at 434, 517 N.E.2d at 1180. The residential complex was built for and used by TEAM missionaries as they returned from, and/or prepared for, service as missionaries. *Id.* at 434-35, 517 N.E.2d at 1180. When applying the reasoning of McKenzie to the facts presented in that case, the TEAM court wrote:

It is noteworthy that under *McKenzie v. Johnson* it is not necessary that a minister's duties require him or her to live in the parsonage; rather the exemption is applicable if "the pastor's religious duties require him to live *in close proximity to the church*." (Emphasis added.) (*McKenzie v. Johnson* (1983), 98 Ill.2d 87, 99, 74 Ill.Dec. 571, 577, 456 N.E.2d 73, 79. *Contra Lutheran Child & Family Services v. Department of Revenue* (1987), 160 Ill.App.3d 420, 425, 112 Ill.Dec. 173, 177, 513 N.E.2d 587, 591.) Because the religious aims of TEAM as a missionary agency differ from the religious aims of a local church, the *McKenzie v. Johnson* test for the applicability of the exemption to a parsonage provided for the pastor of a local church does not directly apply in the case at bar. However, it does guide our analysis of the issue.

TEAM's fundamental religious aim is to carry on its missionary ministry in other countries. Similarly, the ministers who are TEAM's missionaries have fundamental religious duties concerning that missionary ministry. The missionaries' duties are cyclical, alternating between those they have during their periods of service in the field and those they have during their periods of furlough. During their furloughs they prepare themselves physically, psychologically, educationally, and financially for service in the field. The furloughs are necessary to the missionary ministry and are therefore mandatory.

During the furloughs, TEAM requires all of the missionaries to come to its Carol Stream headquarters for debriefing and other furlough-related activities at least once, and preferably twice. The apartment building, which is next door to the headquarters building, reasonably and substantially facilitates TEAM's aim of religious missionary activity because the missionaries' religious duties to prepare to return to the field require that, for part of their furloughs, they live in close proximity to the headquarters building. The apartment building, which many of the missionaries used during their time in the area of the headquarters building, was, therefore, used primarily for religious purposes and so was tax exempt in 1982.

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Evangelical Alliance, 164 Ill. App. 3d at 434-35, 517 N.E.2d at 1180. In contrast with the facts in Evangelical Alliance, here, there is no evidence of how the Martin's residency on the Property served or facilitated some broader, primarily religious, use of the Property by someone other than the Martins.

First, it is clear that Martin's association with the Chicago church does not require him to reside in close proximity to that church. 2009 Agency Decision, p. 3. The evidence shows that Martin has been made a lifetime bishop and pastor of the Chicago church, but it also shows that he is neither required nor expected to be regularly physically present at the Chicago church. *Id.* Further, the Chicago church is approximately 48 miles away from the Property (Tr. p. 28 (Martin)), so the Property is not in close proximity to the Chicago church. Evangelical Alliance, 164 Ill. App. 3d at 434-35, 517 N.E.2d at 1186. Finally, there was no evidence offered to show that the Chicago church, itself, ever used the Property, for any purpose, during 2010.

Martin has argued that there is nothing in Illinois law that requires him to reside near the Chicago church to obtain an exemption. Tr. pp. 82-83 (closing argument); *see also* 2009 Agency Decision, pp. 5-7. At least as it applies to parsonages owned by churches, Evangelical Alliance and McKenzie should put Martin's argument to rest. Evangelical Alliance, 164 Ill. App. 3d at 434, 517 N.E.2d at 1180 ("under *McKenzie v. Johnson* it is not necessary that a minister's duties require him or her to live in the

parsonage; rather the exemption is applicable if “the pastor's religious duties require him to live *in close proximity to the church*.”). And while Evangelical Alliance and McKenzie may be conclusive regarding property owned by churches and used for parsonages, Life does not appear to be a church. See The Church of Eternal Life and Liberty, Inc. v. Commissioner, 86 T.C. No. 54, 86 T.C. 916, Tax Ct. Rep. (CCH) 43,028 (April 29, 1986) (“A church is a coherent group of individuals and families that join together to accomplish the religious purposes of mutually held beliefs. \*\*\* To qualify as a church an organization must serve an associational role in accomplishing its religious purposes.”). But regardless whether Life is a church or some other religious institution, under PTC § 15-40, an applicant is still required to show that property is being used for some primary, religious purpose that is furthered or facilitated by requiring the person(s) actually occupying the property to reside there. 35 ILCS 200/15-40(a)-(b); Evangelical Alliance, 164 Ill. App. 3d at 434-35, 517 N.E.2d at 1186.

Life, however, offered no evidence to show that it — as a religious institution — used the Property for some primary religious purpose. From the record, it appears that Life merely held title to the Property (Applicant Ex. 2, p. 2), and that the only actual use Life made of the Property was to require its corporate insiders to reside there. 2009 Agency Decision, pp. 2-3. That corporate direction was made by Martin, after he was advised that Life had to require the Martins to reside on the Property to obtain a tax exemption for the Property. Tr. pp. 29-30, 37-40 (Martin). That is, the documented corporate use of the Property by Life (2009 Agency Decision, p. 3) provided a direct benefit to the corporation’s insiders — the use of Life’s Property as a personal residence. A use of property that provides a direct and private benefit to the property owner’s insiders is, under Illinois law, not an exempt use of property. See e.g., People ex rel. County Collector v. Hopedale Medical Foundation, 46 Ill. 2d 450, 463-64, 264 N.E.2d 4, 11 (1970) (“the following factors demonstrate to our satisfaction that the Foundation was

operated at least in part for the professional and financial benefit of Dr. Rossi and his associates. ... Dr. Rossi benefited, at least indirectly, from the private practice of medicine on Foundation property and from the use of Foundation facilities as an adjunct to his various business pursuits”); DuPage Art League v. Department of Revenue, 177 Ill. App. 3d 895, 901-02, 532 N.E.2d 1116, 1120 (2d Dist. 1988) (art club that allowed only members to show and sell their works at club fairs was found to provide private inurement to members).

But beyond the question of inurement, there was no evidence offered to show that the Property served some actual, primarily religious, purpose. In this respect, Life’s use of the Property is not like TEAM’s use of property in Evangelical Alliance. In Evangelical Alliance, the residential living quarters were actually used in furtherance of TEAM’s clearly defined religious goals. Evangelical Alliance Mission, 164 Ill. App. 3d at 434-35, 517 N.E.2d at 1180. Here, in contrast, the evidence shows no such primary, associational, use. Rather, the Property was actually and primarily used for the Martin’s private enjoyment, as their personal residence.

In sum, the evidence shows that, during 2010, the Property was actually and primarily used as the personal residence of Life’s corporate insiders. 2009 Agency Decision, p. 2-3; Tr. pp. 28-29 (Martin). That actual, private, residential use of the Property predominated over any claimed, yet wholly unsubstantiated, religious use of it. McKenzie, 98 Ill. 2d at 97-100, 456 N.E.2d at 78-79.

Finally, I address Life’s detrimental reliance argument. The way I understand the argument, Martin is claiming that the Department’s prior grants of exemption for other property that Life previously owned, and which the Martins used as their family residence, caused Life to rely, to its detriment, on the expectation that the Department would grant any of Life’s future exemption applications for other property that Life owned and used for similar purposes. Tr. pp. 5-10, 86-87 (Martin). Martin did not make

clear what remedy he wanted, but it appeared that Life wants the Department to be prevented from denying an exemption for the Property for 2010. *See id.*

To support Life's argument, Martin cited Chicagoland Chamber of Commerce v. Pappas, 378 Ill. App. 3d 334, 880 N.E.2d 1105 (1<sup>st</sup> Dist. 2007). Tr. pp. 5-6. That matter involved a constitutional challenge to a 2004 amendment that added a new section, § 15-176, to the PTC. *Id.*, at 336-39, 880 N.E.2d at 1110-12. Newly added § 15-176 created an “[a]lternative general homestead exemption” which the plaintiffs contested because, among other things, they claimed to have reasonably and detrimentally relied on a prior homestead exemption scheme. *Id.* at 345, 880 N.E.2d at 1117. The court upheld the constitutionality of the new statutory section, and denied all relief to the challengers. With regard to the challenger's detrimental reliance argument, the court ruled as follows:

Finally, as a matter of law, the “commercial, industrial and non-homestead” property owners can show no detrimental reliance. In evaluating detrimental reliance in the case before it, the *Commonwealth Edison* court noted the distinction between a taxpayer being subject to an adjusted amount of an existing tax as compared with being subject to an entirely new tax, stating:

“Edison knew that, under either the old or new versions of sections 5-1024 and 9-107, it would be obligated to pay 1994 county property taxes. The only question was how much its tax bill would be. Edison's position would be \*\*\* more an upsetting of ‘settled expectations,’ if an entirely new tax, rather than a new tax rate, were being imposed by the amendments to section 5-1024 and 9-107. This important distinction between a new, retroactive tax rate and a new, retroactive tax has been frequently noted: ‘ “Nobody has a vested right in the rate of taxation, which may be retroactively changed at the will of Congress at least for periods of less than twelve months; Congress has done so from the outset.... The injustice is no greater than if a man chance to make a profitable sale in the months before the general rates are retroactively changed. Such a one may indeed complain that, could he have foreseen the increase, he would have kept the transaction unliquidated, but it will not avail him; he must be prepared for such possibilities, the system already being in operation. His is a different case from that of one who, when he takes action, has no reason to suppose that any transactions of the sort will be taxed at all.” ’ *United States v. Darusmont*, 449 U.S. 292, 298, 101 S.Ct. 549, 552-53, 66 L.Ed.2d 513, 518-19 (1981), quoting *Cohan v. Commissioner*, 39 F.2d 540, 545 (2d Cir.1930) (Hand, J).” (Emphasis omitted.) *Commonwealth Edison*, 196 Ill.2d at 48-49,

255 Ill.Dec. 482, 749 N.E.2d at 977.

So too here, the “commercial, industrial and non-homestead” property owners identified in plaintiffs' brief as those being deprived of due process knew that some form of homestead exemption would impact their share of the tax burden; it was only a question of to what extent. Section 15-176 imposed no new tax upon the identified plaintiffs. Therefore, even if the considerations our supreme court set out in *Commonwealth Edison* were only factors, not elements, those factors necessarily weigh against plaintiffs; there is no need for a remand for factual development and the circuit court's dismissal of the retroactivity count was proper.

Chicagoland Chamber, 378 Ill. App. 3d at 372-73, 880 N.E.2d at 1138.

Unlike the situation in Chicagoland Chamber, however, this dispute does not involve any claim of retroactivity. The Department is not seeking to reverse a prior exemption that Life may have received for other property that it previously owned, and to assess Illinois property tax for a closed tax year. Rather, this matter involves only Life's application for a property tax exemption for 2010. Department Exs. 1-2. Nor has there been any amendment to PTC § 15-40 that affects either the 2010 assessment year or the conditions necessary for exemption.

Further, Illinois law is clear that, “[b]ecause a cause of action for taxes for one year is not identical to a cause of action for taxes in subsequent years, a decision adjudicating tax status for a particular year is not res judicata as to the status of the property in later years. ... Consequently, even where the ownership and use of the property remain the same, a party may be required to relitigate the issue of its exemption annually.” Jackson Park Yacht Club v. Illinois Department of Local Government Affairs, 93 Ill. App. 3d 542, 546, 417 N.E.2d 1039, 1042-43 (1<sup>st</sup> Dist. 1981). And even if Martin may have previously been led to believe that the Department would grant an exemption for a different parcel of property, for the last few consecutive years, the Department has denied Life's applications for *this* Property, and those denials have been upheld following hearing. See Department Ex. 1; 2009 Agency Decision, *passim*. In any event, Life has no vested right to a property tax exemption. See Jackson Park Yacht Club, 93 Ill. App. 3d at

546, 417 N.E.2d at 1043. To the contrary, “[u]nder Illinois law, taxation is the rule. Tax exemption is the exception. All property is subject to taxation, unless exempt by statute, in conformity with the constitutional provisions relating thereto.” Provena, 236 Ill. 2d at 388, 925 N.E.2d at 1143-44.

**Conclusion:**

I recommend that the Director finalize the Department’s tentative denial of Life’s application for exemption, and that the Property remain taxable for all of 2010.

May 22, 2013

John E. White

Administrative Law Judge