

**PT 15-03**  
**Tax Type: Property Tax**  
**Tax Issue: Religious Ownership/Use**

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

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**ZION EVANGELICAL UM CHURCH,**  
**Applicant**

v.

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

**No. 13-PT-0007**  
**Real Estate Tax Exemption**  
**For 2012 Tax Year**  
**P.I.N. 05-05-17-400-004**  
**Tazewell County Parcel**

**Kelly K. Yi**  
**Administrative Law Judge**

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**RECOMMENDATION FOR DISPOSITION**

**APPEARANCES:** Mr. Bill Becella, *pro se*, on behalf of Zion Evangelical UM Church; Mr. Robin Gill, Special Assistant Attorney General, on behalf of The Department of Revenue of the State of Illinois.

**SYNOPSIS:** This proceeding raises the issue of whether Tazewell County Parcel, identified by Property Index Number 05-05-17-400-004 (hereinafter the “subject property” of “parsonage”) qualifies for exemption from the second half of 2012 property taxes under 35 ILCS 200/15-40 of the Property Tax Code, which exempts “[a]ll property used exclusively used for religious purposes.”

This controversy arose as follows: On July 9, 2012, Zion Evangelical UM Church (hereinafter “Zion” or “Applicant”) filed a Property Tax Exemption with the Tazewell County Board of Review seeking exemption from the second half of 2012<sup>1</sup> property taxes for the subject property. The Board reviewed Applicant’s exemption application and

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<sup>1</sup> Applicant sought exemption beginning July 1, 2012 and stated in the application that if the appointed pastor does not live at the property after 90 days, it will be rented for profit. Dept. Ex. 1, p. 9.

recommended on November 02, 2012 that the exemption be granted for the full year of 2012. Dept. Ex. 1, p. 5. The Department of Revenue of the State of Illinois (hereinafter the “Department”) reversed the Board’s recommendation in a determination dated March 14, 2013, finding that the subject property was not in exempt use in 2012. Dept. Ex. 1, p. 3. Applicant filed a timely appeal of the Department’s exemption denial. On September 12, 2013, a formal administrative hearing was held before Administrative Law Judge Linda Olivero<sup>2</sup> with Bill Becella, member of Zion, Richard Vangiesen, Treasure of the Illinois Great Rivers Conference of the United Methodist Church, Phillip Icenogle, Pastor of Zion, and Nygil Strickfaden, member of Zion, testifying. Following a careful review of the testimony and evidence, it is recommended that the Department’s determination be affirmed.

**FINDINGS OF FACT:**

1. Dept. Ex. 1 establishes the Department’s jurisdiction over this matter and its position that the subject property was not in exempt use during the tax year 2012. Tr. p. 7; Dept. Ex. 1, p. 3.
2. Applicant acquired the subject property, located at 3234 Cole Hollow Road in Pekin, Illinois, on June 25, 1957. It is a single family house with a two-stall attached garage and a full walkout basement for housing of a minster and family. Dept. Ex. 1, p. 4.
3. From 1957 to February 2001, the subject property was occupied by resident pastors. From February 15, 2001 to June 1, 2012, the property was rented for profit and was in a continuous non-exempt status. Dept. Ex. 1, p. 8.

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<sup>2</sup> ALJ Olivero, currently on leave, was unable to write this Recommendation. The Recommendation is based on the review of the hearing transcript and the exhibits admitted at hearing. Credibility of the witnesses is not at issue.

4. As of June 1, 2012, Applicant's then current pastor retired, and this coincided with the parsonage renter moving out. Tr. p. 10; Dept. Ex. 1, p. 8.
5. Due to a search for a new pastor, the conference superintendent, Dan Harry, requested that the parsonage be left unoccupied for the new pastor. Tr. p. 10.
6. The search for a new pastor resulted in the appointment of Pastor Tyler Boyer, to begin employment on July 1, 2012. Tr. pp. 10-11.
7. In late May 2012, Pastor Boyer declined the appointment he had accepted earlier, so the search for a new pastor continued. Tr. p. 11.
8. On July 15, 2012, when Pastor Patricia Gareau began a trial appointment, "[s]he did not need the housing as she preferred to live in her own home." At the end of her trial period on September 30, 2012, she declined the permanent appointment. Tr. p. 12; Dept. Ex. 1, pp. 8, 11.
9. In anticipation of the parsonage being in exempt status by the time the new pastor moved in, a substantial amount of money was spent to prepare the subject property. The receipts show that a vast majority of the expenses occurred in November and December 2012. Tr. p. 11; Dept. Ex. 1. pp. 13-22.
10. On November 1, 2012, Pastor Phillip Icenogle began a temporary appointment. His permanent appointment was later accepted and he remained as Applicant's new pastor but he did not require the parsonage as he lived within 5-10 miles from the church. Tr. pp. 12-13.
11. While the parsonage remained unoccupied from July 1, 2012 to December 31, 2012, it was used for storage of the following church property: office furniture, household appliances, a riding lawnmower, and a 12 ft. aluminum ladder. Tr. pp. 17-18, 25; Dept. Ex. 1, p. 6.

12. On January 1, 2013, the conference superintendent gave permission to rent the parsonage for profit. Tr. p. 13.
13. Some of the church property stored at the subject property was either sold or moved to different locations but the household appliances, such as washer and dryer, stove, and refrigerator, remained there when the new renter moved in as of February 2013. Tr. pp. 17-18, 25.

**Conclusion of Law:**

An examination of the record establishes that Applicant has not demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exemption for the subject property from 2012 real estate taxes. 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 limitations 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 or limitations on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App. 3d 497 (1<sup>st</sup> Dist. 1983).

In accordance with its constitutional authority, the General Assembly enacted the Property Tax Code, 35 ILCS 200/1-3 et seq. The provisions of the statute which govern the disposition of the instant proceeding are found in Section 200/15-40. Section 200/14-40(a) 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 (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). “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. The above 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, 329 (2<sup>nd</sup> Dist. 1987). “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 Marsters v. Missionaries, 409 Ill. 370, 375 (1951).

It is well established in Illinois that a statute exempting property from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation. Gas Research Institute v. Department of

Revenue, 154 Ill.App.3d 430 (1<sup>st</sup> Dist. 1987). Based on these rules of construction, Illinois courts have placed the burden of proof upon the party seeking exemption, and have required such party to prove, by clear and convincing evidence, that it falls within the appropriate statutory exemption. Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App.3d 678 (4<sup>th</sup> Dist. 1994).

The parties agree that ownership of the subject property is not in dispute. Applicant argued that the property qualifies for religious exemption under Section 200/14-40 of the Property Tax Code because the Applicant had intended to use the subject property as a parsonage for the relevant period but could not due to circumstances. To recapitulate, under 35 ILCS 200/15-40(b), housing facilities are exempt from property taxes if: (1) they are “owned by churches or religious institutions or denominations”; (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). At issue is whether the subject property has met conditions two and three above. Applicant argues that since it has made a good faith effort to prepare the property as a parsonage for the arrival of a new pastor, it should be exempt despite the fact that it was left unoccupied during the relevant time period due to lack of need.

Illinois courts have addressed the issue of intent verses actual use of an exempt property. Intent to use is not equivalent to use. Skil Corporation v. Korzen, 32 Ill.2d 249 (1965). Exemptions have been allowed, however, where a property in the actual process of development and adaptation for exempt use. See Illinois Institute of Technology v. Skinner, 49 Ill.2d 59 (1971); Weslin Properties, Inc., v. Department of Revenue, 157 Ill.App.3d 580 (2<sup>nd</sup> Dist. 1987). In the present case, unlike the cases in which exemption was allowed for adaptation and development, the subject property required no adaptation

and development as a parsonage and was ultimately not used for the purpose. While some maintenance was performed at the end of the previous lease, June 1, 2012, no work was required to adapt it to be used specifically as a parsonage. Rather, all the work that was performed was to prepare it as a regular residence. The record shows that Applicant replaced a sink drain in the basement, installed a new smoke alarm, replaced the garage door, cut down a tree, put in a new carpet in one bedroom, installed a hand held shower and shower curtain in master bath, etc. Dept. Ex. 1, p. 6. The evidence demonstrates that the only reason the subject property was left vacant during the relevant period was due to its pastors, both interim and permanent, wishing to live in their own homes. The interim pastor whose 3½ months trial started on July 15, 2012 chose not to live at the parsonage. Similarly, when the current pastor accepted the appointment that began on November 1, 2012, the parsonage was left vacant because he, too, preferred to live at his own home. The subject property ultimately resulted in a rental for profit, as had been for 12 years immediately preceding the relevant period. Based on these facts, I conclude that the subject property does not qualify for exemption under the adaptation and development exception.

As to the issue of actual use requirement, there is case law authority for a church property left temporarily unoccupied or vacant but found to be in exempt use. In Our Savior Lutheran Church v. Department of Revenue, 204 Ill.App.3d 1055, 1060 (5<sup>th</sup> Dist. 1990), the court ruled that the parsonage portion in a single church building, which was used as storage of church records and furniture, continued to be used exclusively for religious purposes, even after it had been temporarily vacated by the pastor's retirement. In that case, the court noted that the property was temporarily vacant after 40 years of continuous use by the retiring pastor, and that it "was never used for commercial

purposes or for any purpose other than as a residence for the pastor and storage of a few church items.” In Mount Calvary Baptist Church, Inc. v. Zehnder, 302 Ill.App.3d 661, 670 (1<sup>st</sup> Dist. 1998), the court found that an incidental interruption of religious use of the church building due to a fire did not destroy the exemption.

In the present case, the evidence shows that the subject property was in a continuous non-exempt use for 12 years immediately preceding the dates at issue. The property still remains as a rental property. The six month period in 2012 was not an incidental interruption of decades of actual use as a parsonage, as was in Our Savior Lutheran Church; rather, it was an incidental interruption of 12 years of actual and continuous use as a rental property. Unlike Mount Calvary Baptist Church, Inc., the subject property, in the present case, was not physically destroyed making it unavailable for use; it was unused primarily due to both the interim and current pastors opting to live in their own homes. Lastly, the subject property is a separate structure, not a portion of a church building that remained in a continuous exempt use. Considering these factors, together with a well settled rule of law that tax exemption statutes are to be strictly construed in favor of taxation, *See, Gas Research Institute v. Department of Revenue*, 154 Ill.App.3d 430 (1<sup>st</sup> Dist. 1987), I conclude that the subject property does not qualify for exemption as a parsonage under 35 ILCS 200/15-40(b).

Assuming, *arguendo*, that the preparations made in good faith were sufficient to satisfy the actual residency requirement, Applicant did not present evidence to satisfy the third condition of Section 200/15-40(b) of the Property Tax Code, which is that the parsonage residency must be a condition of employment. The evidence establishes that Applicant’s current pastor lives at his personal residence five to 10 miles away from the church. No evidence, through testimony or documentary evidence, was presented that

Applicant's current or previous pastors were *required* to reside at the parsonage as a condition of employment. To the contrary, the current pastor is allowed to live away from the church, and so were the two previous pastors. At the time of the previous pastor's retirement, the subject property had been continuously rented for profit for 12 years. The evidence does not support a finding that the parsonage residency was a condition of employment for any of Applicant's pastors in the relevant period. I, therefore, conclude that Applicant does not meet the requirements of actual use under 35 ILCS 200/15-40(b).

Since the subject property, as a matter of law, is not exempt under 35 ILCS 200/15-40(b), the only other consideration is whether the subject property was exempt for religious purposes in the second half of 2012 under 35 ILCS 200/15-40(a). For purposes of this section, a religious purpose means a use of property by a religious society or body of persons as a stated place for public worship, Sunday schools, and religious instruction. Three Angels Broadcasting Network, Inc. v. Department of Revenue, 381 Ill.App.3d 678, 694 (2008). While this is not inclusive of everything that might be regarded as a religious use, it is illustrative of the nature of a religious use in the context of property tax exemptions. *Id.* at 695. In the present case, no evidence was presented that it was ever used as a stated place for public worship, Sunday schools or religious instruction, or anything of that nature. The evidence demonstrates that the subject property has always been used as a residence either for pastors or renters.

This strict meaning of "religious purposes" was later expanded in McMurray College v. Wright, 38 Ill.2d 272 (1967), in which the court stated that "[e]xemption 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 the educational

objectives, or efficient administration of the particular institution.” As discussed earlier, the court in Our Savior Lutheran Church granted exemption for an unoccupied parsonage used as storage of church property due to the temporary nature of vacancy after a long continuous exempt use as a parsonage for decades, and the impracticability of dividing a single church building in which the parsonage was located. Our Savior Lutheran Church at 1061. Similarly, in Mount Calvary Baptist Church, the court found that storage used to store desks, chairs, and air conditioners was reasonably necessary for the accomplishment and fulfillment of the congregation’s aims of worship and religious instruction, or the efficient administration because the church had to temporarily relocate services and activities due to a fire. Mount Calvary Baptist Church at 673.

In the present case, the evidence shows that some of the church property was stored at the subject property during the relevant period. In the present case, the subject property is a single family home, and Applicant does not claim that the entire property was used as storage. The courts have addressed on several occasions the issue of exempt use of a portion of a property. “Where a tract is used for two purposes, there is nothing novel in exempting the part used for an exempt purpose and subjecting the remainder to taxation.” City of Lawrenceville v. Maxwell, 6 Ill.2d 42 (1955). “Where a property as a whole, or in unidentifiable portions, is used both for an exemption purpose and a nonexempting purpose, the property will be wholly exempt only if the former use is primary and the latter is merely incidental.” Illinois Institute of Technology at 66. “An identifiable portion of the property may be exempt, while the remainder is taxable if it is a substantial rather than incidental portion of the property and is used for a nonexemption purpose or not used at all. Thus, there may be separate assessments by separating uses.”

*Id.*

The evidence demonstrates that the subject property in the present case, while left unoccupied, was used to store church property, some of which may be characterized as items used in efficient administration of the church, such as the lawn mower and ladder to maintain the church grounds, and may qualify for exemption under the McMurray College standard. However, Applicant did not present evidence to demonstrate how some of the property, such as washer and dryer, stove, and refrigerator, aid in its aims of worship and religious instruction, or the efficient administration of the church, especially given that the appliances remained at the property when the new renter moved. No evidence was presented to establish that the appliances had ever been used for church purposes. Moreover, there was no specific testimony or documentary evidence, such as photographs, to quantify the portion dedicated to exempt storage use. This is not a case in which a portion of the property used as storage is unidentifiable, as was in Our Savior Lutheran Church where the parsonage was located in a unified church building which had remained in a continuous exempt use. Applicant, here, did not present evidence of percentage of space dedicated for exempt storage use at the subject property. Accordingly, I am unable to conclude what portion of the subject property was used as storage in connection with exempt religious use in the second half of 2012. I conclude Applicant has not proven, by clear and convincing evidence, that the subject property was exclusively used for religious purposes in the second half of 2012 under 35 ILCS 200/15-40(a).

**Recommendation:**

For the foregoing reasons, it is recommended that the Department's determination, which denied exemption from the second half of 2012 property taxes, for Tazewell County Parcel, Property Index Number 05-05-17-400-004 should be affirmed.

Kelly K. Yi  
Administrative Law Judge

February 13, 2015