

**PT 04-47**  
**Tax Type: Property Tax**  
**Issue: Religious Ownership/Use**

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

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**LIVING HOPE EVANGELICAL  
LUTHERAN CHURCH**  
**Applicant**  
v.

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

**A.H. Docket # 03-PT-0063**  
**P. I. # 14-08-180-013**  
**Docket # 03-72-65**

**Barbara S. Rowe**  
**Administrative Law Judge**

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**RECOMMENDATION FOR DISPOSITION**

**Appearances:** Mr. Kent Steinkamp, Special Assistant Attorney General for the Illinois Department of Revenue.

**Synopsis:**

The hearing in this matter was held to determine whether Peoria County Parcel Index No. 14-08-180-013 qualified for exemption during the 2003 assessment year.

Pastor Norman Paul and Mark Schneider, President of Living Hope Evangelical Lutheran Church (hereinafter referred to as "Living Hope") were present and testified on behalf of Living Hope.

The issue in this matter is whether Living Hope used the parcel for religious purposes during the 2003 assessment year. After a thorough review of the facts and law presented, it is my recommendation that the requested exemption be denied. In support thereof, I make the following findings of fact and conclusions of law in accordance with the requirements of Section 100/10-50 of the Administrative Procedure Act (5 ILCS 100/10-50).

**FINDINGS OF FACT:**

1. The jurisdiction and position of the Department that Peoria County Parcel Index No. 14-08-180-013 did not qualify for a property tax exemption for the 2003 assessment year were established by the admission into evidence of Dept. Ex. No. 1. (Tr. p. 8)

2. The Department received the application for exemption of the subject parcel from the Peoria County Board of Review. The board recommended granting the exemption from May 13, 2003 through December 31, 2003. The Department denied the requested exemption finding that the property was not in exempt use. (Dept. Ex. No. 1)

3. Living Hope acquired the subject parcel by a warranty deed dated May 13, 2003. Located on the property is a 2100 square foot one-story house with a basement. Living Hope's minister has occupied the house since June 12, 1998. Living Hope's parent corporation previously owned the land and residence. (Dept. Ex. No. 1)

4. The sole purpose of the purchase of the subject property was for housing for the minister. (Tr. p. 14)

5. The property in question is approximately one mile from Living Hope's church. (Dept. Ex. No. 1)

6. On both the application for property tax exemption and the Parsonage Questionnaire sent to Living Hope by the Department, in response to the question, "Is the minister required, as a condition of employment, to reside in the parsonage?" Living Hope answered "no." (Dept. Ex. No. 1)

7. As of December 11, 2003, Living Hope had no formal employment contract and therefore no written documentation stipulating the fact that it is a requirement of the congregation that the pastor and his family reside on this property. (Dept. Ex. No. 1; Tr. pp. 11, 16)

8. The minister living in the house on the subject property did not know if it was a condition of his employment with Living Hope in 2003 to live in the residence. (Tr. p. 25)

9. At the special voters meeting for February 1, 2004, a motion was made, seconded and passed unanimously that Living Hope require the pastor to live in the parsonage as a function of his service to the congregation, retroactive to the original acquisition by Living Hope of the property. Twelve people, including the pastor, attended the meeting. (Applicant's Ex. No. 1; Tr. pp. 15-16, 28-30)

10. Living Hope was advised it could be represented by an attorney. It decided to proceed *pro se*. (Tr. p. 9)

**CONCLUSIONS OF LAW:**

Article IX, §6 of the Illinois Constitution of 1970, 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.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992)

Pursuant to the authority granted by the Constitution, the legislature has enacted exemptions from property tax. At issue is the religious exemption found at 35 ILCS 200/15-40.

In 2003, a portion of that statute stated:

- (a) Property used exclusively for:
  - (1) religious purposes, or
  - (2) school and religious purposes, or
  - (3) orphanagesqualifies 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.

Property owned by a church and used as a parsonage or monastery was taxable prior to 1957. See People ex rel. Carson v. Muldoon, 306 Ill. 234 (1922), People ex rel. Pearsall v. Methodist Episcopal Church, 315 Ill. 233 (1925)

The Illinois Supreme Court in McKenzie v. Johnson, 98 Ill.2d 87 (1983) held that the provision granting an exemption for a parsonage used primarily for religious purposes was constitutional. The court also required that the parsonage must reasonably and substantially facilitate the aims of religious worship because the pastor's religious duties required that he live in close proximity to the church or because the parsonage had unique facilities for religious worship and instruction or was primarily used for such purposes. The court stated, "[W] hether a particular parsonage may be entitled to exemption turns on the evidence showing how the parsonage is being used, . . . ." *Id.* at 100.

The operative word in the exemption provision at issue is that it is an exemption for religious use of property. Living Hope produced no evidence how the property in question was being used in 2003. Living Hope only concentrated on the fact that it felt that it answered questions about the condition of employment of the pastor in the negative on the application and related documents. In fact, as an acknowledgement that it was not a condition of the pastor's

employment to live in the house in 2003, Living Hope passed a resolution in February 2004 establishing that condition and purporting to make it retroactive. Such a resolution cannot be retroactive in order to qualify for a property tax exemption. The pastor admitted under oath that he did not know if it was a condition of his employment to live in the house in 2003. Living Hope's church is a mile from the subject property. There was no testimony or evidence that religious events took place on the property.

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956) Whenever doubt arises, it is to be resolved against exemption and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944). Further, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967)

Living Hope has failed to meet its burden showing that the use of the building on the subject property was religious. For that reason it is recommended that Peoria County Parcel Index No. 14-08-180-013 remain on the tax rolls and be assessed to Living Hope from May 13, 2003 through December 31, 2003, or for 64% of the 2003-assessment year, the portion of the year that Living Hope owned the property.

Respectfully Submitted,

Barbara S. Rowe  
Administrative Law Judge  
Date: November 22, 2004