

PT 05-1
Tax Type: Property Tax
Issue: Religious Ownership/Use

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

THE DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS)	
)	Docket No. 04-PT-0016
v.)	PIN 21-10-400-004
)	
HOPE EVANGELICAL FREE CHURCH)	Tax Year 2003
)	
Applicant)	

RECOMMENDATION FOR DISPOSITION

Appearances: Kent Steinkamp, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Duane D. Young of LaBarre, Young & Behnke for Hope Evangelical Free Church.

Synopsis:

This case concerns whether property that was purchased with the intent to use it for religious purposes was adapted for religious use during the year 2003. Hope Evangelical Free Church (“applicant”) purchased a 40-acre parcel of property located in Sangamon County on September 15, 2003. The applicant intended to use the property for the location of its new church, and the applicant applied for a property tax exemption. The Board of Review recommended that the exemption be granted from the date that the property was purchased, but the Department of Revenue (“Department”) determined that

the exemption should be denied. The Department concedes that the applicant is a religious organization, but contends that the property is not being used for exempt purposes. The applicant timely protested the Department's decision, and an evidentiary hearing was held. For the following reasons, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. The applicant is an Illinois not-for-profit corporation, the purpose of which is "to spread the Gospel of Jesus Christ in every way prescribed and approved by the Holy Scriptures, to engage in such religious, educational, charitable and benevolent work as the Constitution and Bylaws of this organization may determine, and to own and maintain such buildings and equipment as may be required to carry out the above stated purpose."

(Dept. Ex. #1)

2. In 2002, the applicant concluded that it had outgrown its current church facility at 3135 Old Jacksonville Road in Springfield. The applicant formed a strategic planning team to determine its possibilities for expanding. (Tr. pp. 9-10)

3. Beginning in 2002, the applicant hired BLDD Architects of Bloomington, Illinois, to design the new facilities. The applicant had several meetings with the architects in order for them to get a sense of what the church was like and the applicant's needs. (Dept. Ex. #1; Tr. pp. 9-10)

4. In March 2003, the applicant's Board decided to purchase the property at issue. The property is 40 acres with an option to purchase an additional 10 acres. The applicant's current facility is on property that is a little less than 10 acres. (Dept. Ex. #1; Tr. pp. 11-12)

5. The sole purpose for purchasing the property was to relocate the church campus. (Tr. p. 12)

6. Before the applicant purchased the property, the land was used as farmland. (Tr. p. 24)

7. On March 31, 2003, the applicant contracted to purchase the property from Hermes Brothers Farms, Inc. The contract provides in part as follows:

“Seller shall retain possession of the property in the capacity of a tenant farmer (to and through the removal of any 2003 crop, but no later than 12/1/2003) and shall be entitled to plant a 2003 crop at its own expense and shall be entitled to all the income from the crop, provided however that Buyer, and Buyer’s agents and contractors, may enter onto and upon the land for purposes of land site development, installation of utilities, surveying and commencement of construction; Buyer shall reimburse Seller as tenant farmer for its crop expenses at the rate of \$100 per acre for any crop partially or completely destroyed by Buyer or Buyer’s agents in undertaking the preparation or construction contemplated by this paragraph. Seller’s farming shall be in accordance with regular, usual and customary means and husbandry. Seller shall mow and control weeds and grass growth around the perimeter of the property in like fashion as done on its own adjacent properties during the crop year. Any future or successive farm tenancy shall be negotiated and reduced to a writing; nothing herein is intended to grant Seller, as Tenant, rights as to future years and this demise shall expire as set forth above without further notice.” (Dept. Ex. #1)

8. On September 15, 2003, Hermes Brothers Farms, Inc. conveyed the property to the applicant by warranty deed. (Dept. Ex. #1)

9. During the year 2003, the applicant paid \$89,306.29 to BLDD Architects for architect fees. (Applicant’s Ex. #6; Tr. pp. 16-18)

10. On May 12, 2003, Martin Engineering Company completed surveying the property and prepared a Plat of Survey. During 2003, the applicant paid \$4,259 to Martin Engineering Company for engineering services. (Applicant’s Ex. #5, 6; Tr. p. 16)

11. On May 23, 2003, the applicant filed a Petition for Annexation with the City of Springfield to have the property annexed to the city. The City of Springfield granted the petition. (Applicant's Ex. #1; Tr. p. 13)

12. The applicant employed the services of Frank & West Environmental Engineers, Inc. of Springfield to prepare an Environmental Site Assessment. The report was completed on May 20, 2003. (Applicant's Ex. #4; Tr. pp. 15-16)

13. In the beginning of 2003, the applicant employed the services of Resource Services, Inc. of Dallas, Texas to direct and supervise a capital stewardship campaign to raise funds to pay for the relocation and construction of the new church. During 2003, the applicant paid approximately \$45,000 for this service. (Dept. Ex. #1; Applicant's Ex. #2, 6; Tr. pp. 13-15)

14. Around the time of the closing of the sale of the property, the applicant had a group of people go out to the property and pray over it. Several meetings occurred on the property between the applicant and its contractor and architects. These meetings usually took place every two weeks. (Tr. pp. 23, 26-28)

15. Actual construction of the building on the property began in the spring of 2004. (Tr. p. 24)

CONCLUSIONS OF LAW:

The applicant has requested a religious exemption from the property tax pursuant to section 15-40 of the Property Tax Code ("Code"), which provides in part as follows:

All property used exclusively for religious purposes, or used exclusively for school and religious purposes, or for orphanages and not leased or otherwise used with a view to profit, is exempt, * * *. 35 ILCS 200/15-40.

In deciding whether property is exempt under this provision, the primary use of the property, rather than its incidental use, must be considered. Illinois Institute of Technology v. Skinner, 49 Ill.2d 59, 65-66 (1971); People ex rel. Pearsall v. Catholic Bishop of Chicago, 311 Ill. 11, 16 (1924). In order to qualify for the exemption, the property must actually be used for the exempt purpose. Illinois Institute of Technology at 64. Intention to use is not the same as actual use. Id.

It is well-established that property tax exemption provisions are strictly construed in favor of taxation. Chicago Patrolmen's Association v. Department of Revenue, 171 Ill.2d 263, 271 (1996). The party claiming the exemption has the burden of clearly proving that it is entitled to the exemption, and all doubts are resolved in favor of taxation. Id.; City of Chicago v. Department of Revenue, 147 Ill.2d 484, 491 (1992).

The Department contends that the applicant has not established that the property was adapted for religious use. The Department notes that in Weslin Properties v. Department of Revenue, 157 Ill.App.3d 580 (2nd Dist. 1987), the court stated that “[c]areful architectural preparation is an essential phase of construction and constitutes for this case adaptation and development for an exempting use.” Weslin at 586. The Department argues that the applicant in this case did not give a date as to when the architectural preparation was completed. The applicant provided a master plan from which additional changes needed to be made, but the record does not include the final plan that was provided to the construction company. Also, the Department maintains that even if a portion of the property, such as the building site, was adapted for religious purposes, the applicant did not provide the amount of the 40 acres that this portion covers

in order to receive a partial exemption. The Department asserts that without this evidence, the property cannot be granted an exemption.

The applicant argues that it began developing and adapting the property long before it closed on the property. The applicant claims that it has always intended to use the entire piece of property to relocate its campus and develop the 40 acres, eventually including an additional 10 acres. The applicant states that it takes longer than a day to buy a piece of property, build a church and then use it. According to the applicant, the Department is “being unnecessarily grudging in its position,” and the Department’s contention that the church may not use certain portions of the property is “too sublime.” (Tr. pp. 45-46) The applicant notes that there is no suggestion that the property was bought for any motivation other than to fulfill the church ministries.

The applicant in this case has not presented sufficient evidence to allow the exemption. In Illinois Institute of Technology v. Skinner, *supra*, the Illinois Supreme Court stated as follows:

“We have often held that property must be in actual use for the exempting purpose, to qualify for exemption. ‘(E)vidence that land was acquired for an exempt purpose does not eliminate the need for proof of actual use for that purpose. Intention to use is not the equivalent of use.’” (citations omitted) Illinois Institute of Technology at 64.

In the present case, the applicant clearly acquired the land for religious purposes and intends to use it for religious purposes. The question is whether the actual use of the parcel of property during 2003 was for religious purposes.

According to the purchase contract, the seller retained possession of the property in the capacity of a tenant farmer through the removal of the 2003 crop, but no later than December 1, 2003. The contract also states that “[a]ny future or successive farm tenancy

shall be negotiated and reduced to a writing.” Although farming may have taken place on the property after it was purchased and may be done on the property in the future, the applicant did not provide any evidence concerning when the crops were harvested or what portion of the property remains as farmland. When specifically asked, the applicant’s executive pastor stated that he did not know when the crops were harvested. (Tr. p. 25) He said that the church facility itself is not going to cover the entire 40 acres, but he did not know what portion of the property it would cover. (Tr. pp. 32-38) Right now there is no specific plan for the entire 40 acres, but the applicant intends to use it for church purposes. (Tr. pp. 32-33)

The Illinois Institute of Technology court identified two situations in which property may qualify for the exemption despite the fact that part of it is being used for a nonexempt purpose. First, the property may be wholly exempt if the nonexempt use may be described as “merely incidental.” Illinois Institute of Technology at 66. Second, even if the nonexempt use is more than incidental, the property may qualify for a partial exemption if an “identifiable portion” is used for exempt purposes. Id.

In the present case, even if it is assumed that the applicant’s efforts to build the church constituted an adaptation of the property, the applicant has not established that the farming that took place on the property was “merely incidental” or that an identifiable portion of the property was used to develop the church facility. Without this evidence, it cannot be found that the property, or a portion of it, is exempt. The applicant has the burden of proving by clear and convincing evidence that it is entitled to the exemption, and it has not presented sufficient evidence to show what portion was used for exempt purposes.

The Illinois Institute of Technology case involved an exemption claim for 107 acres of property, but the court allowed the exemption for only 67 acres. The court stated that although the applicant intended to develop the entire tract as a college campus, it did not plan to do so for another 5 to 15 years. Illinois Institute of Technology at 65. At the time that the exemption was requested, the 40 acres that were found to be nonexempt were being leased to a farmer for crop purposes. Illinois Institute of Technology at 61. Although the applicant in the present case did not lease the property to Hermes Brothers Farms, Inc. during 2003, Hermes Brothers still retained possession of the property for farming purposes until December 1, 2003. The applicant stated that it intends to use the entire 40 acres for religious purposes, but at this time it does not have a plan for the entire property, and the development will happen in stages. (Tr. pp. 33-34) From this evidence, it cannot be found that the applicant is entitled to the exemption.

Recommendation:

For the foregoing reasons, it is recommended that the applicant's request for an exemption be denied.

Linda Olivero
Administrative Law Judge

Enter: January 4, 2005