PT 05-10
Tax Type: Property Tax
Issue: Religious Ownership/Use

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

LIFE ABUNDANT OUTREACH, INC. OF GLENVIEW,	**Docket No: 04-PT-0015**
Applicant	**Real Estate Tax Exemption**
v.	**For 2003 Tax Year** **P.I.N. 20-31-400-007-0040**
	McHenry County Parcel
THE DEPARTMENT OF REVENUE OF THE STATE OF ILLINOIS	**Kenneth J. Galvin** **Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Rev. Ralph Ray Martin, *pro se*, on behalf of the applicant; Mr. David W. Stone, Assistant State's Attorney, on behalf of McHenry County; Mr. Marc Muchin, Special Assistant Attorney General, on behalf of the Department of Revenue of the State of Illinois.

SYNOPSIS:

This proceeding raises the issue of whether the subject property, identified by McHenry County Parcel Index Number 20-31-400-007-0040 (hereinafter the "subject property") qualifies for exemption from 2003 real estate taxes under 35 ILCS 200/15-40, which exempts, "[a]ll property used exclusively for religious purposes."

The controversy arises as follows: On August 14, 2003, Life Abundant Outreach, Inc. of Glenview (hereinafter "Life Abundant" or "applicant"), owner of the subject property, filed a Real Estate Exemption Complaint for the residence on the subject

property with the Board of Review of McHenry County (hereinafter the "Board"). The Board reviewed the applicant's complaint and subsequently recommended to the Illinois Department of Revenue (hereinafter the "Department") that the exemption be denied. Dept. Ex. No. 1.

On January 8, 2004, the Department accepted the Board's recommendation finding that the property was not in exempt use in 2003. Dept. Ex. No. 2. On February 24, 2004, the applicant filed a timely request for a hearing as to the denial and presented evidence at a formal evidentiary hearing on September 30, 2004, with Rev. Ralph Ray Martin, Pastor of Life Abundant, testifying. At the evidentiary hearing, the parties stipulated in writing to the following: 1) The transcript of the hearing held on September 21, 2002, in Docket 01-PT-0098 and the documents referred to therein and admitted into evidence shall be admitted into evidence as evidence in this case; 2) The hearing in [04-PT-0015] shall be limited to evidence that shows a change in the use of the property or the character of the entity in title to the property in question; and 3) The [administrative law judge] shall decide the case based on the evidence stipulated to by this stipulation and the evidence that is submitted under the limitations of (2) above.

Following a careful review of the record including the transcripts and evidence admitted at both the September 21, 2002 and the September 30, 2004 evidentiary hearings, it is recommended that the subject property be denied an exemption for the 2003 tax year.

FINDINGS OF FACT:

1. Dept. Ex. Nos. 1 and 2 from the September 30, 2004 hearing establish the Department's jurisdiction over this matter and its position that the subject property was not in exempt use in 2003. Tr. pp. 14-16.

Findings of Fact numbered 2 through 8 are incorporated from the evidentiary hearing held September 21, 2002 in case 01-PT-0098.

2. The subject property is located in Barrington, IL and improved with a one story residential facility. Dept. Ex. No. 1 (9-21-02).
3. The subject property is located about 48 miles from a church [Word of Faith Cathedral] operated by the applicant. Tr. pp. 65-66.
4. Applicant's Articles of Incorporation recite that it is an Ohio corporation organized for purposes of spreading the Christian gospel through means including word of mouth, literature, radio, television, tapes, records and tent crusades. Applicant Ex. No. 3.
5. Applicant's by-laws state, *inter alia*, that:

    A. Applicant 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;

    C. Either Ray or Janice Martin may act as secretary-treasurer;

    D. Both Ray and Janice Martin shall remain in their respective positions for life;

    E. Janice Martin shall become applicant's president and pastor at the time of Evangelist Ray Martin's death;

    Tr. pp. 20, 70-71; Applicant's Ex. No. 5.

6. Applicant is a registered foreign corporation authorized to transact business in Illinois pursuant to a certificate of authorization issued by the Illinois Secretary of State on July 17, 1979. Applicant Ex. No. 4 .
7. Applicant obtained ownership of the subject property by means of a warranty deed dated February 28, 2001. Applicant Ex. No. 1.
8. Evangelist Martin resided in the subject property as of February 28, 2001. Tr. pp. 15, 69-70.

CONCLUSIONS OF LAW:

An examination of the record establishes that Life Abundant has not demonstrated, by the presentation of testimony, exhibits and argument, evidence sufficient to warrant exempting the subject property from property taxes for tax year 2003. 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).

Pursuant to its Constitutional mandate, the General Assembly enacted the Property Tax Code, 35 ILCS 200/1-3 *et seq*. The provisions of that statute which govern the disposition of the instant proceeding are found in Section 200/15-40, which states as follows:

> All property used exclusively for religious purposes, or used exclusively for schools and religious purposes, or for orphanages and not leased or otherwise used with a view to profit, is exempt, including all such property owned by churches or religious institutions or denominations and 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, and 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 the church, religious institution, or denomination requires that the above listed persons who perform religious related activities shall, as a condition of their employment or association, reside in the facility.

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 (2d Dist. 1987). Property satisfies the exclusive-use requirement of the property tax exemption statutes if it is primarily used for the exempted purpose, even

though it may also be used for a secular or incidental purpose. McKenzie v. Johnson, 98 Ill.2d 87, 98 (1983).

Housing facilities are exempt from property taxes if: (1) they are "owned by churches or religious institutions or denominations"; and (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. It is undisputed that the subject property was purchased by Life Abundant on February 28, 2001. Applicant's Ex. No. 1 (9-21-02). The residence serves as a housing facility for Rev. Ray Martin and his wife. Tr. pp. 15, 69-70 (9-21-02). The pivotal question to be determined in the instant case is whether Rev. Martin resides in the residence as a condition of his employment.

At the September 21, 2002 hearing on the subject property, Life Abundant did not introduce any documentary evidence, such as contracts or board resolutions, proving that Rev. Martin was required to live on the subject property as a condition of his employment. Rev. Martin testified that Life Abundant's Board of Directors did impose a requirement that he live on the subject property. Tr. pp. 31, 65-67 (9-21-02). The Board of Directors, according to Life Abundant's bylaws, was composed of Rev. Martin, his wife Janice, and their three children. App. Ex. No. 5.

The administrative law judge in the September 21, 2002 hearing noted that courts generally presume that a board of directors will act in good faith and in furtherance of the company's best interests when making decisions. Spillyards, *et al.* v. Abbud, *et al.*, 278 Ill. App. 3d 663, 681-682 (1st Dist. 1996). Courts usually will not interfere with a governing board's judgment absent a showing that the Board acted in bad faith, abused its discretion or committed gross negligence. *Id*. At the hearing, Rev. Martin testified

that putting the parsonage in Barrington, 48 miles from Word of Faith Cathedral, was a decision he felt was led to by the Lord.

> Q. So it sounds like what you decide is what is decided; is that correct?
> A. Most of the time.
> Q. Right, because you're the father of the family; the leader of the family, are you not?
> A. Yes, I am.
> Tr. pp. 65-66 (9-21-02).

The administrative law judge concluded that it seemed all but impossible for a governing board that was subject to Rev. Martin's personal control and consisted of no one except Rev. Martin and his immediate family to be free from improper influence. The Board, composed only of family members, did not appear to be free to issue managerial directives that reflected good faith efforts to advance the church's best interests in its stated mission of spreading the Gospel.

According to the administrative law judge, any managerial directives from Life Abundant's Board establishing the terms and conditions of Rev. Martin's employment were of suspicious credibility. "Under these circumstances, allowing such directives to have credence in this forum would be tantamount to providing the Martin family with tax savings that they are not lawfully entitled to receive." Even allowing the Board's directives some minimal credibility, the fact that the subject property was located some 48 miles from the Word of Faith Cathedral which Rev. Martin operates raised doubts as to what, if any, legitimate business reasons the Board might have had for requiring Rev. Martin to live at this particular property.

According to the stipulation agreed to by the parties at the September 30, 2004 evidentiary hearing, that hearing would be limited to "evidence that shows a change in

the use of the property or the character of the entity in title to the property in question." Life Abundant admitted into evidence new bylaws signed by Rev. Martin and his wife on June 20, 2004, which "update[s] all previous by-laws for Life Abundant …" The new bylaws state that Life Abundant's Board of Directors is now composed of Rev. Martin, his wife, their three children and "Rev. and Mrs. James Smart and Mrs. Ruth Hudley." App. Ex. No. 1 (9-30-04). The Board now consists of eight members. Tr. pp. 29-30. Rev. Martin "thought" that Rev. Smart was retired and that Mrs. Hudley was a housewife and bible teacher. Tr. pp. 30-31. Neither Rev. nor Mrs. Smart or Mrs. Hudley was present at the September 30, 2004 evidentiary hearing.

The new bylaws state further that "it is a condition of Evangelist Ray Martin's employment to reside in the parsonage owned by Life Abundant" and Rev. Martin must reside in the parsonage owned by Life Abundant to be employed at Word of Faith Cathedral. The bylaws also state that "Ray and Janice Martin [Rev. Martin's wife], or either of them, shall have the authority to take any action on behalf of the corporation and sign any contracts or other documents including mortgages or promissory notes." App. Ex. No. 1 (9-30-04).

Based on the testimony and evidence admitted at the evidentiary hearings including the new bylaws, I am unable to conclude that Rev. Martin resides on the subject property as a condition of his employment. There are several obvious problems with the new bylaws. There are no provisions in these bylaws for amendment of the bylaws. No corporate minutes were presented to show the amendment of the bylaws. There was no testimony as to when the new bylaws were amended, whether the bylaws were amended after the new members of the Board were added to the Board and whether

the new members voted on the amendment. "The power to alter, amend or repeal the bylaws or adopt new bylaws shall be vested in the board of directors unless otherwise provided in the articles of incorporation or the bylaws." 805 ILCS 105/102.25. There was no testimony at the September 30, 2004 evidentiary hearing as to whether the amendment of the bylaws was, in fact, voted on by any members of Life Abundant's Board of Directors.

The new bylaws were signed by Rev. Martin and his wife on June 20, 2004. The tax year at issue in the present case is 2003. Rev. Martin did not cite and my research does not indicate any Illinois case that allows retroactive amendment of bylaws. Furthermore, there is no provision in the bylaws for retroactive application of the bylaws. Finally, the provision in the bylaws that allows Rev. Martin and his wife to take any action and sign any documents on behalf of the corporation indicates to me that the new bylaws, which include their signatures, could have been amended by them alone, without any input or voting by the Board. Rev. Martin would therefore be in the unique position of ordering himself to live in the residence in Barrington, 48 miles from his church, as a condition of his own employment.

The stipulation agreed to by the parties at the September 30, 2004 evidentiary hearing states that evidence at the hearing shall be limited to changes in the use of the property or to changes in the character of the entity in title to the property in question. No evidence was presented showing changes in the use of the property. The new bylaws indicate that Rev. Martin still controls Life Abundant's Board of Directors. Accordingly, I am unable to conclude that there is any change in the entity in title to the property in question.

WHEREFORE, for the reasons stated above, it is my recommendation that real estate, identified by McHenry County P.I.N. 20-31-400-007-0040 shall not be exempt from 2003 real estate taxes.

Kenneth J. Galvin
Administrative Law Judge

January 11, 2005