

PT 05-35
Tax Type: Property Tax
Issue: Religious Ownership/Use

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

HIGHWAY CHURCH OF CHRIST

Applicant

v.

THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS

A.H. Docket # 04-PT-0057

Docket # 04-70-22

Parcel Index # 08-08-02-131-002

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. David K. Overstreet, Neubauer, Hanson and Overstreet for Highway Church of Christ; Mr. Kent Steinkamp, Special Assistant Attorney General for the Illinois Department of Revenue.

Synopsis:

The hearing in this matter was held to determine whether Moultrie County Parcel Index No. 08-08-02-131-002 qualified for exemption during the 2004 assessment year. Lawrence Wayne Elsbury Miller, Elder, and Ronald D. Thomas, Pastor, of the Highway Church of Christ (hereinafter referred to as the "Applicant" or "Church") were present and testified on behalf of Applicant.

The issue in this matter is whether Applicant used the subject parcel for religious purposes during the assessment year at issue. After a thorough review of the facts and law presented, it is my recommendation that the requested exemption be granted for a portion of the 2004 assessment year. 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 Moultrie County Parcel Index No. 08-08-02-131-002 did not qualify for a property tax exemption for the 2004 assessment year were established by the admission into evidence of Dept. Ex. No. 1¹. (Tr. p. 8)

2. The Department received the application for exemption of the subject parcel from the Moultrie County Board of Review. The board recommended granting the exemption. The Department denied the requested exemption finding that the property was not in exempt use. (Dept. Ex. No. 1)

3. The applicant acquired the subject parcel by a Warranty Deed dated August 28, 2003. (Dept. Ex. No. 1)

4. The building on the subject property is used as a housing facility for Applicant's minister. (Dept. Ex. No. 1)

5. On the Property Tax Exemption Application submitted by the Applicant, in response to question No. 12 (b) which states, "Is the minister of other official required to reside in the property as a condition of employment or association?" the church responded "no." (Dept. Ex. No. 1)

6. The Department sent a Parsonage/Covenant Questionnaire to the Applicant. In response to question number 1 "Is the minister/nuns required, as a condition of employment or association, to reside in the parsonage/convent?" the Applicant responded "No." In response to

¹ The Certification of Records on Department's Ex. No. 1 states incorrectly that the A.H. Docket # in this matter is 03-PT-0048.

question number 4 “What duties, if any, require the minister/nuns to live in close proximity to the church?” the Applicant responded, “There are no specific duties.” In response to question number 6 “What duties if any (whether religious or administrative), are performed in the parsonage/convent itself? What is the frequency of these duties?” the Applicant responded “None.” In response to question number 7 “What unique facilities, if any, are located in the parsonage/convent and used for public religious worship or instructions?” the Applicant responded “None”. In response to question number 8 “Is any room or other designated area in the parsonage/convent used primarily by the minister/nuns or others for performing church functions or religious instruction?” the Applicant responded “No.” Question number 9 asked, “Please explain any other facts that tend to demonstrate that the parsonage/convent is used, in a primary sense, for purposes which are reasonably necessary for the accomplishment and fulfillment of religious objectives or efficient administration, of the particular church or other religious institution owning the property.” The Applicant answered, “There is None.” The Parsonage/Convent Questionnaire is dated July 30, 2004. (Dept. Ex. No. 1)

7. Applicant’s minister’s primary function is to study and preach. In addition, he does anything from janitorial and yard work to transporting people. The building on the property at issue is next door to the subway station where transients arrive and the minister assists and directs them. (Tr. pp. 11-12, 26-27)

8. Applicant’s bylaws state that:

The purpose of the Highway Church of Christ shall be as revealed in the New Testament: to win people to faith in Jesus Christ and commit them actively to the Church, to help them grow in the grace and knowledge of Christ that increasingly they may know and do His will, and to work for the unity of all Christians, and with them engage in the common task of building the kingdom of God. (Dept. Ex. No. 1)

9. On November 14, 2004, Applicant's congregation, by a unanimous vote, amended its bylaws to state that: "Per ILCS 200/15-40 the Highway Church of Christ shall require as a condition of their employment a minister to reside in a parsonage owned by the Highway Church of Christ." (Dept. Ex. No. 1; Tr. p. 20)

10. The subject property is located next door and to the west of Applicant's church building. (Applicant's Ex. Nos. 2, 5-9; Tr. pp. 21-23)

11. Applicant's church building has been in existence since 1952. Throughout history, Applicant has assumed the preacher would reside in the parsonage as part of his compensation package. (Tr. pp. 10, 23-24)

12. Applicant's church is self-governed with no hierarchy above the elders. The elders of the church have the authority to manage the affairs of the congregation. (Tr. p. 10)

13. There is no written contract with the minister of Applicant's church. (Tr. p. 11)

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.

A portion of the statute states:

(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.

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. In discussing the parsonage exemption language of the statute at issue, the court said that language was different than the 1905 statute because the new language stated that:

all *such* property owned by churches or religious institutions * * * and used * * * as parsonages * * *. The word “such” refers to the proceeding language which allows an exemption only for “property used exclusively for religious purposes.” (Ill.Rev.Stat. 1981, ch. 120, par. 500.2) The current parsonage exemption only lists parsonages to illustrate or describe one type of property that, under appropriate circumstances, may qualify for the general religious property exemption which tracks the language of article IX, section 6 of the Constitution. Unlike the 1905 parsonage exemption the current parsonage exemption is subject to the exclusive-religious-use requirements of the Constitution and does not unlawfully enlarge the area of allowable exemptions. *Id.* at 96

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. *Id.* at 99

“Following the McKenzie decision, the General Assembly in 1984 added a second paragraph to section 19.2 of the Act which codifies this ‘parsonage exemption’ by stating: ‘[a] parsonage, convent, or monastery shall be considered for purposes of 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 such parsonage, convent or monastery.’” Benedictine Sisters of the Sacred Heart v. Department of Revenue, 155 Ill. App. 3d 325, 330 (2nd Dist. 1987)

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). Applicant herein assumed that the pastor would live in the parsonage as part of his compensation package. The church, on both the application and parsonage questionnaire, answered that the minister was not required, as a condition of

employment, to live in the parsonage. Nor were there any religious duties performed in the parsonage. Not until November 14, 2004 did the Applicant, by a unanimous vote of its congregation, make it a mandate that the pastor live in the parsonage as a condition of his employment, as required by the statute.

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).

I find that Applicant has established that as of November 14, 2004, the minister was required, as a condition of his employment, to live in the parsonage on the property herein issue. It is therefore recommended that Moultrie County Parcel Index No. 08-08-02-131-002 be exempt from property taxation for 13% of the 2004 assessment year.

Barbara S. Rowe
Administrative Law Judge
October 7, 2005