

PT 05-9

Tax Type: Property Tax

Issue: Religious Ownership/Use

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

**KOREAN UNITED METHODIST
CHURCH OF SOUTH SUBURBAN
CHICAGO,**

APPLICANT

v.

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

Docket No: 03-PT-0093

Real Estate Exemption

**For 2002 Tax Year
P.I.N. 31-11-216-020**

Cook County Parcel

**Kenneth J. Galvin
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Mr. John W. Pleta, on behalf of Korean United Methodist Church of South Suburban Chicago; 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 real estate identified by Cook County Parcel Index Number 31-11-216-020 (hereinafter the “subject property”) qualifies for exemption from 2002 real estate taxes under 35 ILCS 200/15-40, wherein “[a]ll property used exclusively for religious purposes” is exempted from real estate taxation.

The controversy arises as follows: On July 24, 2003, Korean United Methodist Church of South Suburban Chicago (hereinafter “Korean” or the “applicant”) filed an Application for Property Tax Exemption with the Cook County Board of Review

(hereinafter the “Board”). The Board reviewed Korean’s application and recommended to the Illinois Department of Revenue (hereinafter the “Department”) that the exemption be denied. Dept. Ex. No. 2.

The Department accepted the Board’s recommendation in a determination dated October 2, 2003, finding that the subject property was not in exempt use in 2002. Dept. Ex. No. 1. On November 18, 2003, Korean filed a timely request for a hearing as to the denial and presented evidence at a formal evidentiary hearing on September 28, 2004, with Sung Sang Park, Senior Pastor, and Yun Cha Dulaney, President of the Board of Trustees, testifying. Following submission of all evidence and a careful review of the record, it is recommended that the Department’s determination be affirmed.

FINDINGS OF FACT:

1. Dept. Ex. Nos. 1 and 2 establish the Department’s jurisdiction over this matter and its position that the subject property was not in exempt use, or being prepared for exempt use, in 2002. Tr. pp. 7-8; Dept. Ex. Nos. 1 and 2.
2. Korean was organized under the Illinois “General Not For Profit Corporation Act” on November 16, 1978 and was chartered in 1979. Korean belongs to the Northern Illinois Conference of the United Methodist Church. Korean has 304 adult members enrolled. Tr. pp. 8, 11, 27; App. Ex. No. 1.
3. Korean obtained ownership of the subject property via warranty deed dated May 18, 1992. The subject property is approximately 130 feet from the Church and the Church’s parking lot. Tr. pp. 9, 35; Applicant’s Ex. No. 4.

4. In 2002, the subject property was entirely wooded. In 2002, Church members went on the property to determine how to utilize it and the Chairperson of Korean's Council Ministry decided to use the property for farming. Tr. pp. 14, 19, 21.
5. In February, 2003, approximately 1,000 trees on the subject property were cut down. In Spring, 2003, the Church planted lettuce, watermelon, water chestnuts, wild sesame, green and red peppers, tomatoes, radishes, pumpkins, cucumbers and eggplant. Tr. pp. 14-15, 19, 22, 38.
6. The Church's children work on the subject property during farming and harvesting seasons. Tr. pp. 13, 16, 22.
7. The produce from the subject property is cooked for 20 to 35 senior Church members and Korean schoolteachers on Saturday. On Sundays, lunch is cooked using the produce from the subject property for approximately 300 congregants. Tr. pp. 16-18.

CONCLUSIONS OF LAW:

An examination of the record establishes that Korean has not demonstrated by the presentation of testimony, exhibits and argument, evidence sufficient to warrant an exemption of the subject property for the 2002 tax year. 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).

In accordance with its constitutional authority, the General Assembly enacted section 15-40 of the Property Tax Code which exempts “[a]ll property used exclusively for religious purposes...” 35 ILCS 200/15-40 (1996). The Illinois Supreme Court defined the term “religious use” as follows:

As applied to the uses of property, a religious purpose means a use of such property by a religious society or persons as a stated place for public worship, Sunday schools and religious instruction.

People ex rel. McCullough v. Deutsche Evangelisch Lutherisch Jehova Gemeinde Ungeanderter Augsburgischer Confession, 249 Ill. 132, 136-137 (1911), (hereinafter “McCullough”). The word “exclusively” when used in section 200/15-40 and other exemption statutes means “the primary purpose for which property is used and not any secondary or incidental purpose.” Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App. 3d 186 (4th Dist. 1933).

Applicant’s actual use determines whether the property in question is used for an exempt purpose. “Intention to use is not the equivalent of use.” Skil Corp v. Korzen, 32

Ill. 2d 249, 252 (1965). However, exemptions have been allowed where property is in the actual process of development and adaptation for exempt use. Illinois Institute of Technology v. Skinner, 49 Ill. 2d 59 (1971); People ex rel. Pearsall v. Catholic Bishop, 311 Ill. 11 (1924). Adapting and developing a property for an eventual exempt use can be sufficient to satisfy the actual use requirement. Weslin Properties v. Department of Revenue, 157 Ill. App. 3d 580 (2nd Dist. 1987).

The Department's October 2, 2003, determination denying the instant exemption request was based solely on the Department's conclusion that the subject property was not in exempt use in 2002. Because the Department denied the exemption solely on lack of exempt use, it is implicit that the Department determined that Korean owned the subject property and qualified as a "religion." These conclusions were unchallenged in the instant proceeding: Korean is a member of the Northern Illinois Conference of the United Methodist Church and owned the property in 2002. Tr. p. 27; Applicant's Ex. No. 3. Accordingly, the only real issue is whether the subject property was actually and exclusively used for exempt purposes.

The applicant requested an exemption for all of tax year 2002. Pastor Park testified that in 2002, the subject property was "a totally wooded area." Tr. p. 19. Ms. Dulaney testified that there were 1,000 trees on the subject property in 2002. Tr. pp. 29-30. Pastor Park testified that church members made a "couple trip[s]" to the subject property in 2002. "And actually, we gather there and think about how to utilize this thing for the church farm mission. We think about it." Tr. p. 21. There was no testimony at the evidentiary hearing as to any work done on the property during the 2002 tax year.

The activities described above which took place on the property in 2002, including making a “couple of trips” and “thinking” about how to utilize the property, constitute a series of preliminary steps directed toward the development of the property for farming. The activities reflect a “mere intention to convert the property for an exempt use.” Weslin Properties, *supra*, at 586. However, intention to use is not the equivalent of use. Skil Corp. v. Korzen, 32 Ill. 2d 249, 252 (1965). Based on the testimony and evidence admitted, I am unable to conclude that the subject property was in the process of development and adaptation for exempt use in tax year 2002. The cutting of the trees and planting of crops in tax year 2003 may indicate that the project had gone beyond an intention of converting the property, but these activities cannot be the basis for exempting the property in 2002, which is the year at issue in this hearing.

WHEREFORE, for the reasons stated above, it is recommended that the Department’s determination which denied the exemption from 2002 real estate taxes on the grounds that the subject property was not in exempt use should be affirmed and Cook County Parcel identified by P.I.N. 31-11-216-020 should not be exempt from property taxes in 2002.

December 23, 2004

Kenneth J. Galvin
Administrative Law Judge