

PT 06-11
Tax Type: Property Tax
Issue: Religious Ownership/Use

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

CHRISTIAN FAITH CENTER
Applicant
v.

THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS

A.H. Docket # 05-PT-0006
P. I. # 42-21-01-376-028
Docket # 04-57-41

Barbara S. Rowe
Administrative Law Judge

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 McLean County Parcel Index No. 42-21-01-376-028 qualified for exemption during the 2004 assessment year.

Mark Marshall, Pastor of Christian Faith Center (hereinafter referred to as the "Applicant"), James Stephenson, Secretary, and Sarah Marshall, Pastor of Applicant, were present and testified on behalf of the Applicant.

The issue in this matter is whether Applicant used the subject parcel for religious purposes during the 2004 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 Illinois Department of Revenue (hereinafter referred to as the “Department”), that McLean County Parcel Index No. 42-21-01-376-028 did not qualify for a property tax exemption for the 2004 assessment year were established by the admission into evidence of Dept. Ex. No. 1. (Tr. p. 7)

2. The Department received the application for exemption of the subject parcel from the McLean County Board of Review. 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 quitclaim deed dated April 16, 2003 from the Marshalls. (Dept. Ex. No. 1)

4. Located on the parcel is a one-story 2099 square foot residence. (Dept. Ex. No. 1)

5. On the application in response to the question “is the minister or other official required to reside in the property as a condition of employment or association?” the Applicant responded “No.” (Dept. Ex. No. 1)

6. Applicant was notified that it could be represented by counsel in this matter. It chose to proceed without an attorney.¹ (Tr. pp. 11, 17-18)

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.

¹ Applicant testified that they found it very difficult to find an attorney to take the case and in fact could not find anyone to work for them. (Tr. pp. 17-18)

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.

Applicant testified that it did not understand the use of the word “required” in the application (Tr. pp. 7-8) because no one is required to live in this State. Applicant’s pastor does not have a written contract with the church that he must live in the parsonage as a condition of employment or association. (Tr. p. 9) When the pastor and his wife quitclaimed the property at

issue to the church, it was subject to the existing mortgage that the Marshalls had on the property. (Tr. p. 10) At that time, there was no discussion regarding the fact that once the church owned the residence, the pastor was required to reside there or move elsewhere. (Tr. p. 10) The pastor believed at the time of the hearing that he was required to live in the home on the subject property because “The fact that that’s – if I don’t live there I wouldn’t have anywhere to live and that’s what makes me believe that.” (Tr. pp. 10-11)

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. *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)

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)

Applicant has established that by quitclaiming the residence to the church, it took the pastor “out from underneath the responsibility of making the payment every month. . . . and that [T]hey were just here² to affirm that the church does provide that for us as a parsonage, that’s all” (Tr. pp. 10-11) The testimony was that the Applicant misunderstood the meaning of the word “required” in the application.

However, there is nothing in the record to show that the parsonage reasonably and substantially facilitates the aims of religious worship because the pastor’s religious duties require that he live in close proximity to the church. There is also nothing in the record to show that the parsonage has unique facilities for religious worship and instruction and was primarily used for such purposes. As the burden of proof is on the Applicant to prove that it is entitled to the exemption, I find that this Applicant has not met that burden.

It is therefore recommended that McLean County Parcel Index No. 42-21-01-376-028 remain on the property tax rolls for the 2004 assessment year.

Barbara S. Rowe
Administrative Law Judge
February 23, 2006

² At the hearing.