

**PT 06-39**

**Tax Type: Property Tax**

**Issue: Religious Ownership/Use**

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

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**MARSHALL DAVIS MINISTRIES,**

**Applicant**

**v.**

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

**No. 05-PT-0060**

**Real Estate Exemption**

**For 2004 Tax Year**

**P.I.N. 32-27-200-005-0000**

**32-27-200-004-0000**

**Cook County Parcels**

**Kenneth J. Galvin**

**Administrative Law Judge**

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**RECOMMENDATION FOR DISPOSITION**

**APPEARANCE:** Mr. Richard C. Baker, Mauck & Baker, Ltd., on behalf of Marshall Davis Ministries; Mr. John Alshuler, 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 Numbers 32-27-200-005-0000 and 32-27-200-004-0000 (hereinafter the “subject property”), qualifies for exemption from 2004 real estate taxes under 35 ILCS 200/15-40 wherein “[a]ll property used exclusively for religious purposes” is exempt from real estate taxation. The controversy arose as follows: On February 13, 2005, Marshall Davis Ministries (hereinafter “MDM” or the “applicant”) filed an Application for Property Tax Exemption with the Cook County Board of Review (hereinafter the

“Board”). The Board reviewed MDM’s application and subsequently recommended to the Illinois Department of Revenue (hereinafter the “Department”) that the requested exemption be denied.

The Department accepted the Board’s recommendation in a determination dated June 23, 2005. Dept. Ex. No. 1. This determination found that the property was not in exempt ownership or exempt use during 2004. On August 24, 2005, applicant filed a timely request for a hearing as to the denial, and presented evidence at a formal evidentiary hearing on July 25, 2006, with Ron Biesboer and Marshall Davis, President of MDM, testifying. At the evidentiary hearing, the Department and MDM stipulated that the subject property was in exempt ownership in 2004. Tr. pp. 5, 14; App. Ex. No. 1. Accordingly, the only issue remaining is whether the subject property was in exempt use or being developed for exempt use in 2004. Following submission of all evidence and a careful review of the record, it is recommended that the Department’s determination denying the exemption be affirmed.

**FINDINGS OF FACT:**

1. Dept. Ex. No. 1 establishes 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 2004. Tr. p. 13; Dept. Ex. No. 1.
2. Richard Biesboer owned the subject property, which consists of 65 acres, located at 547 East 217<sup>th</sup> Street, Chicago Heights, and donated it to MDM by warranty deed on December 31, 2003. Mr. Biesboer had permits from 1991 to 2003 to remove the clay from the subject property to fill in landfills in the area. In 1995, Mr. Biesboer got a permit to accept concrete and dirt on the property. The concrete and dirt were

separated and the recycled concrete was sold for road base. Mr. Biesboer originally planned to donate the property to Chicago Heights for a community park but the village could not get grant money to adapt the property for this use. Tr. pp. 11, 15-20.

3. On December 21, 2003, MDM and Mr. Biesboer signed an “Agreement” that Mr. Biesboer would, at his own expense, not later than 36 months after closing, construct on the subject property a road from grade level to the highest elevation of the land, a detention pond, as required by federal, state or local law, parking lots, a baseball field, football field, and soccer field, including seeding and a site for an indoor soccer building. Mr. Biesboer also agreed, at his expense, to “clear-up any and all foreseeable environmental problems existing at the time of the transfer of possession, and furnish the Donee with proof thereof.” Tr. pp. 20-24; App. Ex. No. 20.
4. Mr. Biesboer made 34 purchases of material and equipment in 2004 at a cost of \$305,055 to adapt the subject property. Three to four people, in addition to Mr. Biesboer, worked on the subject property at different times. The property was completely adapted on October 29, 2004. Tr. pp. 24-57; App. Ex. No. 22.
5. Marshall Davis visited the subject property in January, 2004. Bible classes and meetings of MDM’s Planning Department were held on the subject property in 2004. A “hallelujah event” in which youth are taught the true meaning of Halloween was held on the subject property in October, 2004. Tr. pp. 78-81, 91, 94.
6. The subject property now contains a soccer field, baseball field, football field, fishing pond and parking lot. MDM plans to allow Chicago Heights to use the property for, *inter alia*, their Pony Little League. The subject property would also be open to the

public at no charge but with MDM requesting that users get insurance for their events on the subject property. Tr. pp. 81-84.

7. MDM was incorporated under the “Not For Profit Corporation Act” of Illinois on October 25, 2001. MDM’s Articles of Incorporation state that its purpose is “religious teaching and information.” MDM operates under a set of “Bylaws.” MDM is exempt from federal income tax under section 501 (a) of the Internal Revenue Code as an organization described in section 501 (c) (3). App. Ex. Nos. 2, 3 and 4.
8. MDM’s “Statement of Purpose,” is to bring vision and alignment to the Body of Christ by establishing and maintaining an interdependent coalition of Covenant LEADERS for the Kingdom of God in the earth, regardless of denomination, providing a place of accountability, mentorship and leadership development for the ministry heads, bringing unity, strength and enlightenment through training and education, and assisting in the development of strategic plans and priorities that support long term growth. “LEADERS,” is an acronym for “Loving Excellent Accountable Dedicated Empowering Responsible Servants.” App. Ex. No. 14.
9. Prior to owning the subject property, MDM was using Chicagoland Christian Center’s youth area located at 929 East 103<sup>rd</sup> Street in Chicago for basketball and soccer, which had to be played in the parking lot. MDM and Chicagoland Christian Center have over 3,500 members. Tr. pp. 67-68, 89.

**CONCLUSIONS OF LAW:**

An examination of the record establishes that MDM has not demonstrated by the presentation of testimony, exhibits and argument, evidence sufficient to warrant an

exemption for the subject property for the 2004 assessment 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 (1<sup>st</sup> 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...” “as long as it is not used with a view to profit.” 35 ILCS 200/15-40. 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”).

Pastor Davis testified that the subject property now contains a soccer field, baseball field, football field, fishing pond and parking lot. MDM plans to open up the property to Chicago Heights and to let the village use it for, *inter alia*, their Pony Little League. The subject property would also be open to the public at no charge but with MDM requesting that users get insurance for their events on the subject property. Tr. pp. 81-84. According to the testimony, groups have been hesitant to use the property because there are no washroom facilities, other than “port-o-johns.” It is anticipated that permanent restrooms will be built which should increase use of the property. Tr. pp. 90-92. Prior to owning the subject property, MDM was using Chicagoland Christian Center’s youth area located at 929 East 103<sup>rd</sup> Street in Chicago. Basketball and soccer had to be played in the Center’s parking lot. According to Pastor Davis, the subject property allows MDM to show the children more than just the inner city. MDM and Chicagoland Christian Center have over 3,500 members. Tr. pp. 67-68, 89.

The “religious purposes” contemplated by the Property Tax Code involve the use of property by a “religious society or persons” for “public worship, Sunday schools, and religious instruction.” McCullough, *supra*. My research does not indicate any case where football, baseball, soccer and fishing were found to be “religious purposes” or where opening property for public use constituted use by a “religious society or persons.” Providing a space for football, baseball, soccer and fishing, showing children more than just the inner city, and opening the property to the public at no charge are obviously

beneficial to society. There is just nothing inherently religious about these activities and no exemption for space used for these activities is provided for in the Property Tax Code.

In 2004, the year at issue in this case, the subject property was in the process of being adapted and developed for use as a soccer field, baseball field, football field, fishing pond and parking lot. 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). In the instant case, however, the uses for which the property was being developed were not exempt uses. Accordingly, it is not necessary to address in this Recommendation, the Weslin arguments as to whether the subject property was sufficiently adapted and developed for exempt use in 2004.

In October, 2004, there was a “hallelujah event” held on the subject property in which youth were taught the true meaning of Halloween, “from a Christian perspective.” Tr. pp. 91, 94. Pastor Davis testified that in 2004, “[W]e were probably out there about 10 or 15 times where we weren’t able to do activities of football and we just did sit down teaching and activities with our youth.” Tr. p. 94. No documentary evidence was admitted to support any of the above testimony. No schedule of activities on the subject property for MDM for 2004 was admitted into evidence.

Pastor Davis visited the subject property in January, 2004 and meetings of MDM’s Planning Department were held on the subject property in 2004. Tr. pp. 78-81, 91, 94. In 2004, “[W]e brought all of our vans, our trucks to [the subject property]. We brought our chairs out, sat down and had bible classes.” Tr. p. 79. No documentary evidence was admitted to support the testimony about bible classes.

Some of the above activities may qualify as religious use of the property. However, there was no testimony that there was a “stated place” on the subject property for these activities and it is unclear where on the property these described activities took place. No plat of the subject property was admitted into evidence. There was no testimony that a portion of the subject property was adapted and developed exclusively for religious services. If I were to conclude that the subject property should be exempted for bible classes and other religious activities, I would not be able to determine exactly what specific area qualified for this exemption.

I presume that MDM currently conducts its worship services in a church, although this was not testified to at the hearing. Because of the limited testimony at the hearing, I am unable to conclude that MDM acquired the subject property for purposes which were reasonably necessary for the accomplishment and fulfillment of its religious objectives. DuPage County Board of Review v. Department of Revenue, et al. 339 Ill. App. 3d 230 (2<sup>nd</sup> Dist. 2003). MDM’s Articles of Incorporation, Bylaws, and Statement of Purpose do not, in any way, indicate that MDM directs its services or activities primarily toward youth. Pastor Davis testified that youth will attend religious services, such as bible classes, if the classes are accompanied by social activities and sports afterward. For example, on Saturdays at Chicagoland Christian Center, youth can use play stations and play basketball if they come to class first. Tr. pp. 69-70. This may be the case, but the exemption in the Property Tax Code is for property used for religious purposes, not for property used to attract people to religious services or property used after religious services.

Property tax exemptions are inherently injurious to public funds because they impose lost revenue costs on taxing bodies and the overall tax base. In order to minimize the harmful effects of such lost revenue costs, and thereby preserve the Constitutional and statutory limitations that protect the tax base, statutes conferring property tax exemptions are to be strictly construed in favor of taxation. People ex rel. Nordland v. Home for the Aged, 40 Ill. 2d 91 (1968). Therefore, applicant bears the burden of showing, by a standard of clear and convincing evidence, that the property it is seeking to exempt falls within the provisions under which the exemption is sought. *Id.* Great caution must be exercised in determining whether property is exempt so that only the limited class of properties meant to be exempt actually receives the exempt status that the Legislature intended to confer. Otherwise, any increases in lost revenue costs attributable to unwarranted application of the religious exemption will cause damage to public treasuries and the overall tax base. The applicant in this case failed to show that the subject property is necessary for MDM to carry out its ministry.

WHEREFORE, for the reasons stated above, I recommend that the Department's determination dated June 23, 2005 which denied an exemption for the subject property, consisting of Cook County P.I.N.S. 32-27-0200-005 and 32-27-200-004, should be affirmed and the subject property should not be exempt from real estate taxes in the 2004 assessment year.

November 27, 2006

Kenneth J. Galvin  
Administrative Law Judge