

**PT 06-6**  
**Tax Type: Property Tax**  
**Issue: Religious Ownership/Use**

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

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<b>THE DEPARTMENT OF REVENUE</b>	)	
<b>OF THE STATE OF ILLINOIS</b>	)	
	)	<b>Docket No. 04-PT-0015</b>
<b>v.</b>	)	<b>PIN 14-29-476-053</b>
	)	
<b>CATHOLIC CHURCH DIOCESE OF</b>	)	<b>Tax Year 2003</b>
<b>SPRINGFIELD</b>	)	
<b>Taxpayer</b>	)	

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**RECOMMENDATION FOR DISPOSITION**

Appearances: George Logan, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Bradley E. Huff of Graham & Graham, Ltd. for the Catholic Church Diocese of Springfield.

Synopsis:

This case concerns whether a parcel of property located in Sangamon County and owned by the Catholic Church Diocese of Springfield (“applicant”) qualifies for a property tax exemption for the year 2003. The applicant alleges that the property qualifies for an exemption on the basis that it is used exclusively for religious purposes. The property contains a residence that is used by a retired bishop. The Department of Revenue (“Department”) denied the exemption. The applicant filed a Motion for Summary Judgment, and both parties filed briefs with Joint Stipulations and Exhibits. In

the Department's brief, it indicates that the parties have agreed that this matter be resolved based on the Joint Stipulations and Exhibits, and the stipulations indicate that the stipulations and exhibits consist of all the evidence to be presented by the parties in the administrative hearing. The parties also agree that the issue in this matter is whether the property qualifies for an exemption on the basis that the retired bishop is required to live there as a condition of his employment. After reviewing the record, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. On April 16, 2003, The Most Reverend George J. Lucas, Roman Catholic Bishop of the Diocese of Springfield, acquired the property at issue in this case. The property is located at 1400 Guemes Court, Springfield, Illinois. (Stip. #1; Joint Ex. H)

2. Bishop Lucas holds title to all real estate located in the Diocese of Springfield pursuant to a Declaration of Trust executed by him on December 14, 1999. (Stip. #2; Joint Ex. I)

3. The subject real estate was purchased as a residence for Bishop Daniel L. Ryan, former Bishop of the Diocese of Springfield. (Stip. #3)

4. From the date of purchase through the filing of the stipulations, Bishop Ryan has made the property his residence and has continuously lived there. (Stip. #4)

5. The real estate is not leased or otherwise used with a view to profit. (Stip. #5)

6. Bishop Ryan says mass in Spanish for the Missionary Sisters of the Sacred Heart at their convent, 260 N. Amos, Springfield (approximately 2 blocks from Bishop Ryan's residence). He also says mass for the Sisters of the Ursuline Convent, 1400 N. 5<sup>th</sup> Street, Springfield. (Stip. #7)

7. Bishop Ryan also says daily mass in his home. There is a designated chapel area as well as a tabernacle for the reservation of the Eucharist. Mass in the residence is usually only attended by Bishop Ryan himself. (Stip. #8)

8. Although Bishop Ryan is a retired Bishop, he is still a Roman Catholic priest and continues to be a member of the College of Bishops, a pastor in his church, a teacher of doctrine, a priest of sacred worship, and a minister of governance. He has the right and duty to take part in Ecumenical Councils with voting power. He continues to be consulted about questions of a general nature and provides pastoral experience. In all matters, he continues with the same religious responsibilities he had when he held the office of Bishop. (Joint Ex. B, ¶3)

9. The property was purchased in order to provide Bishop Ryan with living quarters in close proximity to the Chancery Offices (less than one half mile) and to be convenient for Bishop Ryan to provide his pastoral services to the Diocese. (Joint Ex. B, ¶5)

10. In order to receive residential housing at the cost of the Diocese, Bishop Ryan must reside within the Diocese. (Joint Ex. B, ¶6)

11. Included in the residence is an office area approximately 13 by 13 feet. There is also a chapel in the home, properly equipped to accommodate daily mass said by Bishop Ryan. The chapel is approximately 11 feet by 15 feet. (Joint Ex. B, ¶7)

12. The Diocese is obligated under church law to provide for the retired bishop. No material wealth is acquired personally by a bishop during his term of office, and the Diocese becomes obligated for his material needs when he retires. (Joint Ex. G)

CONCLUSIONS OF LAW:

The applicant has requested an exemption from property tax pursuant to section 15-40 of the Property Tax Code (35 ILCS 200/1-1 *et seq.*), which provides in part as follows: “Property used exclusively for \* \* \* religious purposes, \* \* \* qualifies for exemption as long as it is not used with a view to profit.” 35 ILCS 200/15-40(a). This section further provides as follows:

(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. 35 ILCS 200/15-40(b).

In determining whether property is exempt under this provision, the primary use of the property, rather than its incidental use, must be considered. McKenzie v. Johnson, 98 Ill. 2d 87, 98 (1983); People ex rel. Pearsall v. Catholic Bishop of Chicago, 311 Ill. 11, 16 (1924). In order to qualify for the exemption, the property must actually be used for the exempting purpose. Illinois Institute of Technology v. Skinner, 49 Ill. 2d 59, 64 (1971). Intention to use is not the same as actual use. *Id.*

It is well-established that property tax exemption provisions are strictly construed in favor of taxation. People ex rel. County Collector v. Hopedale Medical Foundation, 46 Ill. 2d 450, 462 (1970). The party claiming the exemption has the burden of proving by clear and convincing evidence that it is entitled to the exemption, and all doubts are resolved in favor of taxation. *Id.*; City of Chicago v. Department of Revenue, 147 Ill. 2d 484, 491 (1992); Evangelical Hospitals Corporation v. Department of Revenue, 223 Ill. App. 3d 225, 231 (2<sup>nd</sup> Dist. 1992).

The applicant argues that the property qualifies for the exemption because it is a housing facility provided to a church official, otherwise known as a parsonage, or in the Catholic Church, a rectory. The applicant states that the statutory requirements have been interpreted to create a three-part test: (1) the property must be owned by a duly qualified religious institution; (2) the property must be used as a housing facility for clergy employed by a religious institution; and (3) the property must be occupied by clergy who must reside in the facility as a condition of employment. See McKenzie v. Johnson, 98 Ill. 2d 87 (1983). The applicant contends, and the Department agrees, that only the third requirement is at issue in this case.

The applicant believes that this case is similar to Evangelical Alliance Mission v. Department of Revenue, 164 Ill. App. 3d 431 (2<sup>nd</sup> Dist. 1987). In that case, a building used to house missionaries who were on furlough was found to be exempt. The court found, among other things, that the statute allowed an exemption if the pastor's religious duties required him to live "in close proximity to the church." Evangelical Alliance Mission *Id.* at 443.

The applicant asserts that in the present case, the retired Bishop Ryan must live in close proximity to the churches within his Diocese. The applicant states that he still performs several functions as a priest for the Church: he says daily mass in his residence, he says mass in Spanish for the Missionary Sisters of the Sacred Heart, and he says mass for the Sisters of the Ursuline Convent. The applicant believes that all of these, and his administrative and pastoral duties, require Bishop Ryan to live in close proximity to the churches. He lives less than one half mile from the Chancery Offices. The applicant states that if Bishop Ryan decided to live elsewhere, he would cease to be provided with cost of living benefits and residential facilities from the Springfield Diocese. The applicant claims that Bishop Ryan is consulted on many matters dealing with the inner workings of the Diocese and the Catholic Church.

In response, the Department argues that the property does not qualify for the exemption because the retired bishop is not required to live in the facility as a condition of employment. The Department states that it is unclear from the record whether the applicant employed Bishop Ryan in 2003. Bishop Ryan's affidavit states that he retired in 1999, and there are other references in the record to Bishop Ryan as the "former Bishop." The Department maintains that the evidence does not indicate that the applicant requires Bishop Ryan to live in the residence as a condition of employment.

The Department asserts that although the statute requires the clergy to reside in the facility as a condition of employment, the applicant seems to argue that it is sufficient merely that the clergy's duties require him to live "in close proximity" to the church, relying on Evangelical Alliance Mission. The Department states that the court in that case relied on the statute that was in effect during 1982. The Department contends that in

1984, the General Assembly changed the statute to include the requirement that the pastor must live in the parsonage “as a condition of employment” in order for the property to be exempt. The Department believes that the Evangelical Alliance Mission case is not applicable in the instant case because the statute has been changed.

The Department also maintains that it appears that the applicant is attempting to argue that the residence qualifies under the more general provisions of section 15-40(a) rather than the specific exemption for parsonages under section 15-40(b). The Department contends that when both a general and specific provision relate to the same subject, the specific provision must be applied. See People v. Villarreal, 152 Ill. 2d 368, 379 (1992). The Department argues that because subsection (b) specifically governs property used as a housing facility for ministers, which is the type of property in question in this case, it is controlling.

Finally, the Department claims that even if subsection (a) were controlling, the property still does not qualify for an exemption because it is not exclusively used for religious purposes. The Department states that the record does not show any specific religious activities that the retired bishop performs at the residence as an employee of the applicant. The Department contends that the documentation refers to only very general references to the types of activities performed by the retired bishop. Moreover, the retired bishop lives in the residence in order to get “residential housing at the cost of the Diocese.” (Ex. B, ¶6) The Department states that this is reaffirmed in the applicant’s brief wherein it says that if the former bishop decides to live elsewhere, the Diocese will no longer provide the cost of living benefits. The Department notes that the applicant does not state that it would terminate the employment of the retired bishop for not living

in the residence. The Department asserts that the property is not used primarily for religious purposes.

As the Department has noted, the language requiring clergy to live in the facility as a condition of employment was not in the statute reviewed by the court in Evangelical Alliance Mission. The relevant language in the statute that applies in the present case states that the housing facility is considered 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.” 35 ILCS 200/15-40(b). Although the bishop is still associated with the church, the evidence is not sufficient to find that he must live in the residence as a condition of his association. According to the evidence presented, the bishop has the option of living outside of the Diocese, so he is not required to live in the residence. Also, it is not clear that because he chose to reside in the Diocese that he must continue to perform duties as a bishop. The facts do not clearly indicate that he is required to perform religious activities and reside in the facility. The applicant has the burden of proving clearly and conclusively that it is entitled to the exemption. See Hopedale Medical Foundation, 46 Ill. 2d at 462; Evangelical Hospitals Corporation, 223 Ill. App. 3d at 231. Because all debatable questions must be resolved in favor of the Department, the facts do not support a finding that the property is entitled to the exemption.

Recommendation:

For the foregoing reasons, it is recommended that the applicant's Motion for Summary Judgment be denied and summary judgment be granted in favor of the Department. The property is not entitled to an exemption for the year 2003.

Linda Olivero  
Administrative Law Judge

Enter: January 25, 2006