

**PT 99-14**

**Tax: PROPERTY TAX**  
**Issue: Religious Ownership/Use**

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

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<b>LUTHERAN CHURCH OF THE GOOD</b>	)	<b>Docket #</b>	<b>97-46-20</b>
<b>SHEPHERD OF BOURBONNAIS</b>	)	<b>A.H. Docket #</b>	<b>98-PT-09</b>
<b>Applicant</b>	)		
	)	<b>Parcel Index #</b>	<b>09-18-300-023</b>
<b>v.</b>	)		<b>09-19-100-080</b>
	)		
<b>THE DEPARTMENT OF REVENUE</b>	)	<b>Barbara S. Rowe</b>	
<b>OF THE STATE OF ILLINOIS</b>	)	<b>Administrative Law Judge</b>	

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**RECOMMENDATION FOR DISPOSITION**

Appearances: Gregory A. Deck, Petersen, Deck, Ruch & Baron for Lutheran Church of the Good Shepherd of Bourbonnais; Brenda L. Gorski, Civil Division of the State's Attorney of Kankakee County for the Kankakee County Board of Review.

Synopsis:

The hearing in this matter was held at the Illinois Department of Revenue, Chicago, Illinois on April 17, 1998, to determine whether or not Kankakee County Parcel Index Nos. 09-18-300-023 and 09-19-100-080 qualified for exemption during the 1997 assessment year.

Mr. Paul F. Schultz, property chairman for the Lutheran Church of the Good Shepherd of Bourbonnais, (hereinafter referred to as the "Applicant") was present and testified on behalf of the applicant.

The issues in this matter include, first, whether the applicant was the owner of the parcels during the 1997 assessment year; secondly, whether the applicant is a religious organization; and lastly, whether these parcels were used by the applicant for exempt religious purposes during the

1997 assessment year. Following the submission of all the evidence and a review of the record, it is determined that the applicant owned these parcels during all of the 1997 year. It is also determined that the applicant is a religious organization. Finally, it is determined that the applicant did not use the property for religious purposes during the 1997 assessment year.

Findings of Fact:

1. The jurisdiction and position of the Department that Kankakee County Parcel Index Nos. 09-19-100-080 and 09-18-300-023 did not qualify for a property tax exemption for the 1997 assessment year was established by the admission into evidence of Dept. Ex. Nos. 1 through 6. (Tr. p. 12)

2. On August 1, 1997, the Department received a property tax exemption application from the Kankakee County Board of Review for Permanent Parcel Index Nos. 09-19-100-080 and 09-18-300-023. The applicant had submitted the request and the board recommended granting a full year exemption for the 1997 assessment year. The Department assigned Docket No. 97-46-20 to the application. (Dept. Grp. Ex. No. 2)

3. On December 26, 1997, the Department denied the requested exemption application, finding that the property was not in exempt use. (Dept. Ex. No. 3)

4. The applicant timely protested the denial of the exemption and requested a hearing in the matter. (Dept. Ex. No. 4)

5. The hearing held at the Department's offices in Chicago, Illinois on April 17, 1998, was pursuant to that request. (Dept. Ex. No. 6)

6. The applicant acquired the subject parcels by a warranty deed dated June 19, 1996. (Dept. Grp. Ex. No. 2 pp. 9-10; Tr. p. 14)

7. The properties consist of 3.347 contiguous acres that are to the East and South of the applicant's church building and parking lot. (Dept. Ex. No. 2 p. 17; tr. p. 15-18)

8. The parcels are vacant land and contain no buildings. They are overgrown with weeds. The church is holding the property for future expansion needs and as an extension of the

current church yard. (Dept. Grp. Ex. No. 2 pp. 1, 3-5, 7, 11, 15, & 17; Applicant's Ex. Nos. 1-3; Board of Review Ex. No. 1; Tr. p. 15)

9. When the applicant purchased the properties, there were crops growing on the land. The crops were subsequently harvested in 1996. (Tr. p. 15)

10. The applicant mowed the properties on August 2, 1997. The land was tilled the week of November 3, 1997, in hopes that the weather would permit a dormant grass seeding application. The weather did not so permit and as of December 15, 1997, the parcels were dirt fields. No other activities took place on the properties in 1997. (Dept. Ex. No. 2 p. 15; Tr. p. 18)

11. The applicant has walked the lands and discussed various feasible uses for the parcels. Although there have been no outdoor services held on the subject parcels, that is one of the possible uses that have been discussed. The main purposes will be to beautify the area around the church, and for recreational purposes. The parcels may be used for a pavilion or as a picnic area. The area is not large enough for baseball. (Tr. p. 19-25)

12. I take administrative notice of the fact that the Department granted an exemption for the adjacent church and parking lot pursuant to Docket No. 8146-5. (Dept. Ex. No.5)

#### 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. That portion of the statutes exempts certain property from taxation in part as follows:

All property used exclusively for religious purposes, or used exclusively for school and religious purposes, or for orphanages and not leased or otherwise used with a view to profit, is exempt, . . .

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 (1941). 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)

In The People v. Deutsche Gemeinde, 249 Ill. 132 (1911) the Illinois Supreme Court stated:

Unless facts are stated from which it can be seen that the use is religious or a school use in the sense in which the term is used in the constitution the application should be denied. The words used in the constitution are to be taken in their ordinary acceptation and under the rule of strict construction, which excludes all purposes not within the contemplation of the framers of that instrument. While religion, in its broadest sense, includes all forms and phases of belief in existence of superior beings capable of exercising power over the human race, yet in the common understanding and in its application to the people of this State it means the formal recognition of God as members of societies and associations. As applied to the uses of property, a religious purpose means a use of such property by a religious society or body of persons as a stated place for public worship, Sunday schools and religious instruction. *Id.* at 136-137

The attorney for the applicant in its brief cites County Collector v. Olsen, 48 Ill.App. 3d 572 (1<sup>st</sup> Dist 1977) for the proposition that “Property that is in the actual process of development and adaptation for exempt use should be treated as being developed to such use.” In that case, Cook County had acquired lands to construct an expressway. The statutory provision at issue granted an exemption to “All market houses, public squares and other public grounds owned by a

municipal corporation and used exclusively for public purposes.”<sup>1</sup> Therefore, both ownership and use were required before the land in question could qualify for exemption. Regarding the question of use, the court stated:

. . . We think it wise to take notice of the fact that the construction of a major modern expressway, from its initial phases until completion, may require a number of years, and it is necessary to acquire the needed land some time in advance. Such land acquired in advance of actual physical construction, then, simply by virtue of its location and public ownership is in a very real sense ‘in the actual process of development and adaptation’ for use by the public, for indeed, its eventual use as part of a completed highway may necessarily depend on its simply being available in an essentially dormant state for some period of time. Here, there was evidence that land was condemned for construction of a massive highway project and, within a reasonable time, was used as a completed part of that project. *Id.* at 581-582.

The land at issue before me consists of 3.347 acres that were only mowed and tilled by the applicant during 1997. The land wasn’t used for anything. It needed to be used for religious purposes. I find that the major development needed for an expressway by a municipal corporation is not the same as developing a 3.347-acre parcel for religious purposes. Nor is the case before me a condemnation proceeding. I therefore find that the holding in County Collector v. Olsen is not applicable to the facts before me.

The applicant also cites People ex rel. Pearsall v. Catholic Bishop of Chicago, 311 Ill. 11 (1924) (hereinafter referred to as Pearsall) in its brief for the proposition that “The ‘exempt use’ requirement for a religious property tax exemption is necessarily construed in a liberal manner when applied to the yard and grounds of a religious institution.” In Pearsall the Illinois Supreme Court held that all but an 80-acre portion of the 465 acre tract at issue qualified for exemption under the same statutory provision that is at issue in this case. Pearsall concerned land that was used for a Catholic Seminary. The seminary had a six-year course of study for the students. The term for instruction lasted from the middle of September to the middle of June of the following year. The students were not allowed to leave the seminary grounds except in an emergency. The

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<sup>1</sup> The statutory provision is currently found at 35 **ILCS** 200/15-75.

physical training of the students required three hours of time per day. In holding that a portion of the lands at issue of the school of learning qualified for exemption, the Court stated :

From the testimony produced on the trial it appears that the main buildings of the school were all in use, and other buildings located on different tracts were also used, in connection with the educational work. The entire acreage, from plans previously made, was undergoing a process of change from the raw or natural state and being converted into school grounds or campus, with drives, walks, flower beds and other improvements. It is true, a large part was being devoted to recreation, the lake comprising some 140 acres for boating, swimming and skating, the wooded land with its paths and trails, the proposed golf course, baseball diamond and tennis courts for those who partake of such outdoor exercise. *Id.* at 15

The court went on to say:

The proof shows the lake has been dredged and cleaned and had prior to April 1 been used by the school for swimming, boating, skating and other winter sports. Piers had been built and the foundation for a boat-house laid before April 1, 1922. That tract was used for the purpose intended before that date, and the completion of the boat-house would only add to the convenience of its use by the school. The same is also true of the other tracts except the golf course. It is true, the school contemplated constructing more driveways and paths on other tracts, but about four miles of such roads had been constructed through the grounds and wooded tracts and were used exclusively for recreational purposes by the school. *Id.* at 17.

The land at issue herein was not used for school or recreational purposes. In fact, it was not used for anything at all. I therefore find that the holding in Pearsall that land used for recreational purposes in conjunction with the operation of a seminary is not determinative of the facts before me.

In Antioch Missionary Baptist Church v. Rosewell, 119 Ill.App.3d 981 (1<sup>st</sup> Dist. 1983) the Illinois Appellate Court found that a church-owned building which was not used for any purpose and was boarded up during the taxable years in question did not qualify for a property tax exemption for those years. I find the holding in that case applicable to the facts before me.

Although the applicant herein intends to use the properties for religious purposes, the only thing that the applicant did with the property in 1997 was to mow it in August, and till it in November for a grass seeding that did not take place. The Supreme Court discussed the question of intended use also in Pearsall, *supra*. The Court was addressing the use of the golf course area. The Illinois Supreme Court held that the mere fact that the property was intended to be used for an exempt purpose was not sufficient to exempt said property. The Court required that the actual primary exempt use must have begun for the property to be exempt.

Based upon the foregoing, I recommend that Kankakee Parcel Index Nos. 09-18-300-023 and 09-19-100-080 remain on the tax rolls for 1997 and be assessed to the applicant, the owner thereof.

Respectfully Submitted,

Barbara S. Rowe  
Administrative Law Judge  
January 26, 1999