

PT 05-23
Tax Type: Property Tax
Issue: Religious Ownership/Use

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

NEW LIFE ASSEMBLY OF GOD
Applicant

v.

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

A.H. Docket # 04-PT-0022
Docket # 03-12-09

Parcel Index # 08-08-13-18-305-015
Barbara S. Rowe
Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. Kent R. Steinkamp, Special Assistant Attorney General for the Illinois Department of Revenue.

Synopsis:

The hearing in this matter was held to determine whether Clark County Parcel Index No. 08-08-13-18-305-015 qualified for exemption during the 2003 assessment year.

Mr. Tim Foster, Pastor of New Life Assembly of God, (hereinafter referred to as the "Applicant" or "New Life") and Mr. Mike Cribelar, Deacon of New Life, were present and testified on behalf of Applicant.

The issues in this matter include, first, whether Applicant owned the parcel during the 2003 assessment year; secondly, whether Applicant is a religious organization; and lastly, whether New Life used the parcel for religious purposes during the 2003 assessment year. After a thorough review of the facts and law presented, it is my recommendation that a portion of the property qualifies for exemption from the period of June 6, 2003 through December 31, 2003. 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 Department that Clark County Parcel Index No. 08-08-13-18-305-015 did not qualify for a property tax exemption for the 2003 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 Clark County Board of Review who recommended granting a partial year exemption from July 1, 2003 through December 31, 2003. The Department denied the requested exemption finding that the Applicant failed to supply additional information¹ despite repeated requests by the Department. (Dept. Ex. No. 1)

3. The Applicant acquired the subject parcel by a warranty deed dated June 6, 2003. Located on the subject property is a two story “former commercial building” with 2318 square feet of ground area. The applicant calls the building the “Solid Rock Café”. (Dept. Ex. No. 1)

4. The Solid Rock Café is open on Wednesday nights for youth services for young adults ages 12-19. On Saturday evenings it is open to the youth of the community. Everyone is welcome. Approximately 20-22 youth used the building in 2003. Wednesday night services consist of a game time, praise and songs for about 30 minutes, a sermon, prayer and an

¹ Specifically the Department requested: “A certificate of exemption from us or proof of eligibility for the exemption for those properties served by this ancillary property Other: Please send us the following information. An affidavit that describes the exact uses of the property, the frequency of the uses, and the date the uses began for 2003. BE SPECIFIC and list dates it was used, what it was used for and by whom. Do you charge for any of the programs or services that you provide? If yes, do you waive fees according to one’s ability to pay? Provide documentation showing your fee waiver policy. Provide a fee schedule. A copy of the floor plan or drawing that shows the dimensions and exact use of all areas of the building, including all floors and basement. A copy of the plot plan showing all buildings, parking lots, etc. located on this parcel. Pictures of the interior, keyed to the floor plan, showing the exact use of all areas of the building, including all floors and basement.”

“invocational to receive Christ and prayer”. Games are open after the service. (Applicant’s Ex. Nos. 3-3d; Tr. pp. 12-14)

5. In 2003, New Life also used the building for its Junior High School Vacation Bible School, church anniversary celebration and various Christmas parties. Junior High Vacation Bible School started on June 9, 2003 and ran through June 12, 2003. Women’s ministries meet at the building once a month. The men’s ministry meets at the building and also works on it. There is no charge to participate. (Applicant’s Ex. No. 3a; Tr. p. 11)

6. A donation of \$30 for non-members and \$25 for members is suggested if groups other than Applicant wish to use the building. Smoking and alcohol are not allowed on the premises. All areas must be restored to the original condition following use. Only Christian music is allowed. All reservations are made with the pastor to avoid conflicts. Leftover food must be disposed of and all trash must be taken out. New Life has a Usage Application for the Solid Rock Building that is only granted to Christian organizations/church attendees. The \$25-30 donation covers the cost of having the building cleaned. There was no indication that Applicant rented the building in 2003. (Applicant’s Ex. No. 4; Tr. pp. 15, 20, 29-30)

7. The first floor of the building contains a 17’8” X 12’ stage that was completed in 2004, a praise, worship and sermon area that also has a pool table, ping pong table and fosse ball table, and a 11’9” X 17’8” snack bar area that is under construction. The only things served in the snack bar area are Cokes and candy bars. There is no charge for those items. A hallway leads to the “Big Game Room” at the rear of the first floor area that will have two air hockey games, a weight bench and a basketball hoop game. The Big Game Room is also under construction and was used for storage of band instruments, couches and other items in 2003. A bathroom is located at the far back of the first floor. (Applicant’s Ex. Nos. 5a, 7a; Tr. pp. 15-17, 27-29)

8. The second floor of the Solid Rock Café is currently under construction “with lots of work yet to be completed.” New Life intends that this area will eventually become the apartment for New Life’s youth and children’s pastor and his wife. Applicant estimates that it

will cost about \$15,000 to renovate the area. At the time of the hearing the area was not being used and “no one goes up there.” (Applicant’s Ex. Nos. 5b, 7c; Tr. pp. 16-17)

9. The city council of Marshall would not grant the funds to provide utilities for the New Life Solid Rock Café. At the appropriations committee meeting, one of the councilmen stated that “it’s a good thing but it is too tightly connected to the church.” (Applicant’s Ex. Nos. 9-10; Tr. pp. 18-19)

10. New Life’s church building was granted a property tax exemption by the Illinois Department of Revenue pursuant to Docket No. 98-12-4. (Applicant’s Ex. No. 2; Tr. p. 10)

11. New Life was advised that an attorney could represent it in this matter. It chose to proceed *pro se*. (Tr. pp. 9-10)

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.

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 . . . 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

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.

New Life purchased the subject property on June 6, 2003. The building on the land had been used for commercial purposes prior to the purchase. Subsequent to the purchase in 2003, the front part of the first floor of the property, known as the praise, worship and sermon area, was used extensively for youth services, Vacation Bible School, Christmas parties and men's and women's ministries.

In People ex rel. McCullough v. Deutsche Gemeinde, 249 Ill. 132 (1911) the Court stated: “[A]s 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. That restricted definition of religious use was expanded in Pearsall v. Catholic Bishop of Chicago, 311 Ill. 11 (1924). In that case, the Illinois Supreme Court found that church owned property that contained a 140 acre lake with a boathouse, where swimming, boating and skating took place, as well as additional wooded land with paths and trails used by the seminary for the physical training of its students qualified for exemption as used for school and religious purposes. Applicant herein used the front area of the first floor of the building on the property in question also for recreational and religious purposes when it held the teen worship services, game time, praise and song celebrations, and ministries for its men's and women's groups.

The back part of the first floor was used for storage of musical instruments and other materials reasonably necessary for the accomplishment of applicant's religious use of the property. The Appellate Court of Illinois has determined that property owned by a church and used for storage of church records and furniture qualified for a property tax exemption in Our Savior Lutheran Church v. Department of Revenue, 204 Ill.App. 3d 1055 (5th Dist. 1990), *leave to appeal denied* 136 Ill.2d 546 (1991). In Mount Calvary Baptist Church, Inc. v. Zehnder, 302 Ill.App.3d 661 (1st Dist. 1998) the court found that the evidence demonstrated that the storage building used to store Mount Calvary's property including desks, chairs and air conditioners, "facilitated the congregations efforts to keep its church services, activities, and community outreach programs ongoing. . ." *Id.* at 673. Similarly, the Applicant herein uses the storage area in the back of the first floor to facilitate its praise, worship and recreational events held in the Solid Rock Café.

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 not established that it uses the upstairs area for religious purposes. Although it eventually intends to house its youth and children's minister and his family in that area, it admits that the area still needs a great deal of work and was not used in 2003. 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. Antioch Missionary Baptist Church v. Rosewell, 119 Ill.App.3d 981 (1st Dist.

1983). In addition to being vacant and unused, Applicant herein did not allege that it would be a condition of the minister's employment that he live in the area, as is required by the statute.

The Revenue Act allows different portions of real property to be taxed and exempted on the basis of the relevant tests for exemption. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992). Where property is used for two purposes, one of which would exempt it from taxation and the other would not, it is proper to assess and levy tax against that part of the property that is devoted to a use not exempt from taxation. City of Mattoon v. Graham, 386 Ill. 180 (1944), City of Lawrenceville v. Maxwell, 6 Ill.2d 42 (1955), People ex rel. Kelly v. Avery Coonley School, 12 Ill.2d 113 (1957)

For the foregoing reasons, it is recommended that the first floor of the Solid Rock Café on the property herein question qualifies for exemption from the period of June 6, 2003 through December 31, 2003 or for 57% of the 2003 assessment year. It is also recommended that the upstairs portion of the building on Clark County Parcel Index No. 08-08-13-18-305-015 remains on the tax rolls for the period of June 6, 2003 through December 31, 2003 and be assessed to the Applicant, the owner thereof during that period.

Barbara S. Rowe
Administrative Law Judge
Date: May 6, 2005