

PT 10-03

Tax Type: Property Tax
Issue: Charitable Ownership/Use
Religious Ownership/Use

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

SET FREE INITIATIVES,
APPLICANT

Docket No: 09-PT-0043

Real Estate Tax Exemption

For 2008 Tax Year
P.I.N. 04-10-119-003

DuPage County Parcel

THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS

Kenneth J. Galvin
Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Mr. David Libby, on behalf of Set Free Initiatives; Ms. Paula Hunter, Special Assistant Attorney General, on behalf of the Department of Revenue of the State of Illinois.

SYNOPSIS:

This proceeding raises the issue of whether the subject property, identified by DuPage County Parcel Index Number 04-10-119-003 (hereinafter the “subject property”), qualifies for exemption from 2008 real estate taxes under 35 ILCS 200/15-40, which exempts “[a]ll property used exclusively for religious purposes,” or 35 ILCS 200/15-65,

which exempts property used for charitable purposes or 35 ILCS 200/15-35, which exempts property of schools.

The controversy arose as follows: On December 31, 2008, Set Free Initiatives (hereinafter “Set Free” or “Applicant”), filed a Real Estate Exemption Complaint for the residence on the subject property with the Board of Review of DuPage County (hereinafter the “Board”). The Exemption Complaint filed was a “PTAX-300-R” for religious exemptions, and the Applicant completed Question 12 on the PTAX-300, indicating that the subject property was “used as a housing facility for a minister of a church or other similar official of a religious institution or religious denomination.” The Board reviewed the Exemption Complaint and subsequently recommended to the Illinois Department of Revenue (hereinafter the “Department”) that a full year exemption be granted.

On March 19, 2009, the Department rejected the Board’s recommendation finding that the property was not in exempt ownership or use in 2008 and that the Applicant was not the owner of the property. Dept. Ex. No. 1. On May 18, 2009, the Applicant filed a request for a hearing as to the denial. At the pre-trial conference on August 3, 2009, the Applicant requested, and the Department agreed, that the issue at hearing would be whether the subject property was used for religious, charitable or educational purposes. The Applicant presented evidence at a formal evidentiary hearing on October 26, 2009 with testimony from David Libby, Minister of Set Free, and his wife, Heather Libby, Mike Bocker, Greg Witek and Kevin Williamson, supporters of Set Free’s ministry, and David Joseph Libby, David Libby’s father. Following a careful review of the record, it is recommended that the subject property be denied an exemption for the 2008 tax year.

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 ownership or use in 2008 and that the Applicant was not the owner of the subject property. Tr. pp. 10-12.
2. The subject property is located at 114 Chicago Street in West Chicago. The Libby’s moved into the residence in June of 1992. The Libby’s have six children. The subject property is the Libby’s “primary residence” and the family has no other residence. The title to the subject property is held by Mr. and Mrs. Libby. Tr. pp. 15, 21, 29-30, 42, 61, 76-77.

CONCLUSIONS OF LAW:

An examination of the record establishes that Set Free has not demonstrated, by the presentation of testimony, exhibits and argument, evidence sufficient to warrant exempting the subject property from property taxes for tax year 2008. 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 (1st Dist. 1983). Pursuant to its Constitutional mandate, the General Assembly enacted the Property Tax Code, 35 ILCS 200/1-3 *et seq.* The provisions of the Property Tax Code which govern the disposition of the instant proceeding are found in Section 200/15-40, “Religious Purposes,” 200/15-65, “Charitable Purposes,” and 200/15-35, “Schools.”

35 ILCS 200/15-40, “Religious Purposes.” Section 200/15-40(a) exempts property used exclusively for “religious purposes,” as long as it is not used with a view to profit. Section 15-40(b) exempts property that is owned by churches, religious institutions or 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, including the convents and monasteries where persons engaged in religious activities reside. “A parsonage, convent or monastery or other housing facility shall be considered under this Section to be exclusively used for religious purposes when persons who perform religious related activities shall, as a condition of their employment or association, reside in the facility.” 35 ILCS 200/15-40.

The above statute allows an exemption for property used “exclusively” for religious purposes. Benedictine Sisters of the Sacred Heart v. Department of Revenue, 155 Ill. App. 3d 325 (2d Dist. 1987). Property satisfies the “exclusive use” requirement of the property tax exemption statutes if it is primarily used for the exempted purpose, even though it may also be used for a secular or incidental purpose. McKenzie v. Johnson, 98 Ill.2d 87 (1983). “Property is generally susceptible of more than one use at a given time and the exemption is determined upon the primary use, and not upon any secondary or incidental use.” People ex rel. Marsters v. Missionaries, 409 Ill. 370 375 (1951).

The subject property does not qualify for exemption as a “parsonage,” under 35 ILCS 200/15-40(b) because the property is owned by Mr. and Mrs. Libby. Mr. Williamson testified that the title to the subject property is held by Mr. and Mrs. Libby. Tr. pp. 76-77. 35 ILCS 200/15-40(b) specifically requires that the property be owned by a church, religious institution or religious denomination in order to qualify for exemption as a parsonage. Furthermore, no documentary evidence was admitted showing that Mr. Libby is required to live on the subject property as a condition of his employment or association with Set Free. No documentary evidence was presented showing that Set Free had an independent board of directors or governing body in 2008 that had the authority to order Mr. Libby to reside on the subject property as a condition of his employment or association with Set Free. Without evidence of ownership by Set Free and documentation requiring Mr. Libby to live on the subject property, I am unable to conclude that the residence is “exclusively” used for religious purposes as a parsonage.

Since the subject property, as a matter of law, is not exempt under 35 ILCS 200/15-40(b), the only other consideration is whether the subject property was exempt for religious purposes in 2008 under 35 ILCS 200/15-40(a). It is clear from the record in this case that, as a matter of law, the subject property does not qualify for exemption under 35 ILCS 200/15-40(a). The subject property has more than one use but the question of whether the subject property is entitled to exemption must be determined from its primary use. The primary use of the subject property in 2008 was as a residence for David Libby, his wife and six children. The Libby's moved into the residence in June of 1992. Tr. p. 15. Mrs. Libby testified that the house on the subject property was the family's "primary residence" and the family had no other residence or home. Tr. p. 21. Mr. Bocker testified that, as far as he knew, the residence on the subject property was the Libby's "primary and principal residence." Tr. pp. 29-30. David Joseph Libby testified that the house on the subject property is the Libby's residence, "where they raise their children and live day-to-day." Tr. p. 61.

Based on the witnesses' testimony, I must conclude that the principal and primary use of the subject property is as a residence for the Libby family. The subject property is used as a residence for eight persons, twenty-four hours/day, seven days/week. Because the primary use of the subject property is as a residence that does not qualify as a parsonage, the primary use of this property is secular. The right to an exemption is determined from a property's primary use.

Mrs. Libby testified that "[W]e do have our worship services on Sunday." Tr. p. 17. No documentary evidence was admitted to support this statement. If worship services are held in the residence, I cannot recommend an exemption for unidentifiable portions of

the residence used for worship services on Sunday, when the residence is used for secular purposes at other times. The Property Tax Code does not provide for hourly, daily, or incidental, exemptions of property. Furthermore, I cannot ignore the legislatively mandated requirement that property be “exclusively” used for the exemption claimed. There can be only one primary use of property, and because the primary use of the subject property is secular, the property does not qualify for exemption under 35 ILCS 200/15-40.

35 ILCS 200/15-65, “Charitable Purposes.” For property to be exempt from taxation for “charitable purposes,” the property must be owned by a charitable organization and used exclusively for charitable purposes. Krause v. Peoria Housing Authority, 370 Ill. 356 (1939).

The subject property does not satisfy either of these two requirements. As discussed above, the subject property is owned by Mr. and Mrs. Libby. No documentary evidence was presented showing that the owners of the property are a “charitable organization.” “Exclusive use” for charitable exemption purposes, refers to the primary purpose for which property is used, and not to any secondary or incidental purpose. Arts Club of Chicago v. Department of Revenue, 334 Ill. App. 235 (1st Dist. 2002). The subject property is exclusively used as a residence for the Libby family, so it cannot also be “exclusively” used for charitable purposes.

In Methodist Old People's Home v. Korzen, 39 Ill. 2d 149 (1968) (hereinafter “Korzen”), the Illinois Supreme Court outlined the following “distinctive characteristics” of a charitable institution which, when present, suggest charitable use of property: (1) the benefits derived are for an indefinite number of persons [for their general welfare or in

some way reducing the burdens on government]; (2) the organization has no capital, capital stock or shareholders; (3) funds are derived mainly from private and public charity, and the funds are held in trust for the objects and purposes expressed in the charter; (4) the charity is dispensed to all who need and apply for it, and does not provide gain or profit in a private sense to any person connected with it; (5) the organization does not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses. No documentary evidence was admitted by Mr. and Mrs. Libby or Set Free at the hearing. I am unable to conclude that the subject property is used for charitable purposes, in accordance with the characteristics detailed in Korzen, without documentary evidence, including financial statements.

35 ILCS 200/15-35, “Schools.” This Section of the Property Tax Code allows exemptions for “property of schools on which the schools are located and any other property of schools used by the schools exclusively for school purposes.” 35 ILCS 200/15-35(b). The right to tax exemption is to be accorded to schools, religious and charitable organizations only when property is exclusively used for either one of the three purposes. People ex rel. Marsters v. Missionaries, 409 Ill. 370 (1951). As discussed previously, the primary use of the subject property is as a residence for the Libby family. There was no testimony at the hearing that any identifiable portion of the residence was used only for school purposes. Because the subject property is “exclusively” used as a residence, it cannot also be exclusively used for “school” purposes.

Assuming, for purposes of argument, that an identifiable area of the residence was exclusively used for “school” purposes, I would still not be able to recommend a property tax exemption. It is unclear from the record how the subject property is used for “school”

purposes. Mrs. Libby testified that “[T]here are a lot of times when [Mr. Libby] will have groups over, and [he’ll] be teaching on different topics.” Tr. p. 18. When Mr. Libby asked Mrs. Libby as to how their home was used for educational purposes, she replied that “we had a guy live with us who was teaching people how to distribute food to people that couldn’t buy any food or afford food.” Tr. p. 18. Mrs. Libby also testified that she and Mr. Libby home-school their children “every day.” “Our kids have never gone to school.” “We do classes with other kids in our home.” Tr. p. 24. Mr. Bocker testified that “they educate their family, but I’ve seen a number of other kids come into the household and been educated.” Tr. p. 28.

In order to determine whether a given property constitutes a school or a facility used for educational purposes and thereby qualifying for exemption under 35 ILCS 200/15-35, it is necessary to look at whether the property contains a school offering an established, commonly accepted program of academic instruction. Carpenters’ Apprenticeship and Training Program v. Dept. of Revenue, 293 Ill. App. 3d 600 (1st Dist. 1997). Under this standard, the courts have been inhospitable toward granting an exemption to a school whose curriculum does not consist of traditional subject matter common to accepted schools and institutions of learning. *Id.* at 608. I am unable to conclude from the very limited testimony in the record that this factor has been met through the “educational” use of the subject property.

It is well-established that property tax exemption provisions are strictly construed in favor of taxation. Chicago Patrolmen’s Association v. Department of Revenue, 171 Ill. 2d 263, 271 (1996). 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. 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 (2nd Dist. 1992). Set Free has failed to prove, by any evidentiary standard, that the subject property is entitled to exemption for either religious, charitable or school purposes.

WHEREFORE, for the reasons stated above, it is my recommendation that real estate, identified by DuPage County P.I.N. 04-10-119-003 shall not be exempt from 2008 real estate taxes.

ENTER:

Kenneth J. Galvin
Administrative Law Judge

January 25, 2010