

**PT 98-35**

**Tax Type: PROPERTY TAX**

**Issue: Charitable Ownership/Use**

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

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**LIVING LIGHT TOTAL  
OUTREACH FOR CHRIST,  
APPLICANT**

**v.**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE**

**Docket No: 94-16-932**

**Real Estate Exemption**

**For 1994 Tax Year  
P.I.N. 20-17-328-038**

**Cook County Parcel**

**Robert C. Rymek  
Administrative Law Judge**

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**RECOMMENDATION FOR DISPOSITION**

**APPEARANCES:** Christine M. Reidy of Mauck, Bellande & Cheely on behalf of Living Light Total Outreach for Christ.

**SYNOPSIS**

This proceeding raises the limited issue of whether the second-floor rear bedroom (hereinafter the “rear bedroom”) of Cook County Parcel Index Number 20-17-328-038 (hereinafter the “subject property” or “subject parcel”) should be exempt from 1994 property taxes. The applicant is seeking exemption under section 15-40 of the Property Tax Code<sup>1</sup> which exempts “All property used exclusively for religious purposes” (35

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<sup>1</sup> In People ex. rel. Bracher v. Salvation Army, 305 Ill. 545 (1922), the Illinois Supreme Court held that the issue of property tax exemption necessarily depends on the statutory provisions in force during the time for which the exemption is claimed. This

ILCS 200/15-40 (1996)) and section 15-65 which exempts the property of “institutions of public charity” which is “actually and exclusively used for charitable and beneficent purposes” (35 ILCS 200/15-65 (1996)).

This controversy arose as follows:

On January 5, 1995, Living Light Total Outreach for Christ (hereinafter “LLTOC” or “applicant”) filed a Property Tax Exemption Complaint with the Cook County Board of (Tax) Appeals (hereinafter the “Board”). Dept. Group Ex. No. 1, Doc. B. The Board reviewed the complaint and on April 6, 1995, recommended that an exemption be granted for the 1994 tax year. On March 21, 1996, the Illinois Department of Revenue (hereinafter the “Department”) granted the subject property an exemption from 1994 property taxes, except for the rear bedroom which the Department concluded was not in exempt use. LLTOC filed a timely appeal seeking to have the rear bedroom exempted. On June 10, 1997, a formal administrative hearing was held at which evidence was presented. Following a careful review of all the evidence, it is recommended that the rear bedroom of the subject parcel be granted a property tax exemption for the 1994 tax year.

### **FINDINGS OF FACT**

1. Dept. Gr. Ex. No. 1 and Dept. Ex. No. 2 establish the Department’s jurisdiction over this matter and its position that the rear bedroom was not in exempt use in 1994.
2. The subject parcel is located at 1412 W. 63<sup>rd</sup> Street in Chicago. Dept. Gr. Ex. No. 1.

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applicant seeks exemption from 1994 real estate taxes. Therefore, the applicable

3. The subject property is improved with a two-story building (hereinafter the “building”). App. Gr. Ex. 1.
4. LLTOC is a not for profit corporation organized in 1980 “to communicate the power of the Gospel of Jesus Christ to troubled people wherever they are” and to help anyone “involved with drugs or alcohol, [become] a strong happy and successful person and to prevent others from becoming so involved.” App. Ex. No. 3.
5. LLTOC acquired title to the subject property via a warranty deed dated December 21, 1988. App. Ex. No. 4.
6. LLTOC used the lower level of the building as administrative offices for a drug rehabilitation program and as a chapel. Dept. Gr. Ex. No. 1. Tr. pp. 26.
7. In 1994 Robert and Angela Weeden, who were ordained ministers, lived in the front part of the second floor of the building. Tr. pp. 15, 22.
8. The building could be easily entered through a window in the rear bedroom. Tr. p. 15.
9. The building is located in a high crime area and used to be a “dope house.” Thus, neighborhood criminals were aware that the building could be entered through the rear bedroom window. Tr. p. 15.
10. Because of the easy access available through the rear bedroom window, Augustus Wimberly, who was not a minister, stayed in the rear bedroom

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provisions are those found in the Property Tax Code (35 ILCS 200/1 *et seq.*).

for security purposes whenever the building was occupied. Tr. pp. 16-20, 24.

11. Although the rear bedroom was used primarily by Wimberly, it was also, on rare occasions, also used by LLTOC supporters, guest speakers, and a pastor visiting from Mississippi. When these guests stayed in the room, Wimberly would sleep there too. Tr. pp. 17-21.

### **CONCLUSIONS OF LAW**

An examination of the record establishes that this applicant has demonstrated by the presentation of testimony, exhibits and argument, evidence sufficient to warrant an exemption for the rear bedroom for the 1994 tax 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 limitations 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 or limitations 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 “All property used exclusively for religious purposes” (35 ILCS 200/15-40 (1996)) and section 15-65 which exempts the property of “institutions of public charity” which is “exclusively used for charitable or beneficent purposes” (35 ILCS 200/15-65 (1996)).

In the instant case, it is undisputed that the majority of subject property is entitled to exemption from 1994 property taxes. The only issue is whether the rear bedroom should also have been exempted because it was used “exclusively”<sup>2</sup> for exempt purposes.

Where one distinct portion of a property is used primarily for an exempt purpose and another distinct portion is used primarily for a nonexempt purpose, the portion used for exempt purposes may be tax-exempt while the portion used for non-exempt purposes may be taxed (Illinois Institute of Technology v. Skinner, 49 Ill. 2d 59 (1971)). Portions of property used as residences of domestic employees, maintenance personnel, and the like are not subject to exemption unless the resident-employee either: (1) performs an exempt function such as educational or religious duties, and is required by those same duties to live in the residence; or, (2) performs duties in furtherance of the institution’s exempt purpose in the building. McKenzie v. Johnson, 98 Ill. 2d 89 (1983); Girl Scouts of Du Page County v. Dep’t of Revenue, 189 Ill. App. 3d 858

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<sup>2</sup> The word “exclusively,” when used in Section 15-145 and other tax exemption statutes means “the primary purpose for which property is used and not any secondary or incidental purpose.” Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430 (1<sup>st</sup> Dist. 1987); Pontiac Lodge No. 294, A.F. & A.M. v. Department of Revenue, 243 Ill. App. 3d 186 (4<sup>th</sup> Dist. 1993).

(2<sup>nd</sup> Dist. 1989); Benedictine Sisters of the Sacred Heart v. Dep't of Revenue, 155 Ill. App. 3d 325 (2<sup>nd</sup> Dist. 1987) 171 Ill. App. 3d 1082 (2<sup>nd</sup> 1988); Lutheran Child & Family Services v. Dep't of Revenue, 160 Ill. App. 3d 420 (1987).

Here, the use of the rear bedroom by people other than Wimberly was rare and merely incidental use which is legally insufficient to establish that the bedroom was used primarily for exempt purposes in 1994. The evidence shows that the room was used primarily by Wimberly and accordingly any analysis must focus on Wimberly's use of the bedroom.

Wimberly clearly did not satisfy the first basis for exemption of a residential area because there was no testimony he performed an exempt function and no testimony that he was required by those same duties to live in the rear bedroom. However, Wimberly satisfied the second basis for exemption of a residential area by performing duties in furtherance of LLTOC's exempt purpose in the building.

The evidence presented at the hearing established that the primary reason Wimberly stayed in the rear bedroom was to protect the subject property by guarding the rear window access. LLTOC argues that by protecting the institution's property and personnel Wimberly was furthering LLTOC's exempt goals. The appellate court has rejected similar arguments in other cases concluding:

It appears that their extra-hours duties could be handled by \*\*\* installing additional security equipment. Although this might entail some additional expenses for the plaintiff, the issue is whether the employees' duties are reasonably necessary for the performance of its charitable functions, not what is convenient for the institution.

Cantigny Trust v. Dep't of Revenue, 171 Ill. App. 3d 1082, 1087 (2<sup>nd</sup> Dist. 1988) (denying exemption for residence of park's security director); accord Girls Scouts of Du Page County, *supra* at 864 (denying exemption for residence of the camp's site manager).

However, I find Cantigny and Girls Scouts of Du Page County are factually distinguishable from the case at hand. Here, unlike in Cantigny and Girls Scouts of Du Page County: (1) the subject property was located in a high crime area; (2) the subject property was formerly a "dope house" and thus a magnet for criminal activity; (3) the applicant was engaged in drug rehabilitation activities would tend to have adverse effects on the local illegal drug trade, thus making the applicant a prime target for criminal retaliation; and (4) Wimberly actually stayed in the building where the exempt activities occurred, not a separate residence. Under these circumstances, I find that Wimberly's use of the bedroom was more than merely "convenient" for the applicant, it was "reasonably necessary" to assure that the applicant could effectively pursue its exempt purposes.

Therefore, for the reasons stated above, I recommend that Cook County Parcel Index Number 20-17-328-038 be exempted from 1994 property taxes including the rear bedroom.

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Date

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Robert C. Rymek  
Administrative Law Judge