OPINION NO. 1095

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

TAX DIVISION

FILED

MAY 5 1972

Superior Court of the District of Columbia Tax Division

THE MARYLAND SYNOD OF THE LUTHERAN CHURCH IN AMERICA,

Petitioner

v.

DISTRICT OF COLUMBIA,

Respondent

DOCKET NO. 2155

OPINION

The Petitioner, Maryland Synod of the Lutheran Church in America, appeals from an assessment of real estate taxes against it for the fiscal year 1971. The total assessment was $1,558.16 which includes tax in the amount of $1,469.96 plus a penalty of $88.20. This Court has jurisdiction to hear this appeal pursuant to D. C. Code 1967, §47-801e (Supp. IV, 1971).

The question presented in this appeal is whether the real property located at 1443 Gallatin Street, N.W. in the District of Columbia (Lot 65 in Square 2805), which is owned by the Petitioner, is exempt from real estate taxes pursuant to D. C. Code 1967, §47-801a(n). That section provides:

> The real property exempt from taxation in the District of Columbia shall be the following and none other:
>
> (n) Buildings belonging to religious corporations or societies primarily and regularly used for religious worship, study, training, and missionary activities.

Petitioner contends that the property is exempt since it is a religious organization which leases the property, with option to buy, to Mt. Zion Baptist Church. The church allegedly uses the property primarily and regularly for "religious worship, study, training and missionary activities."

The Respondent argues against the exemption on the grounds that (a) the statute requires a concurrence of ownership and use; (b) there is no evidence that Mt. Zion Baptist Church uses the property for religious study, training, and missionary activities; and (c) the exemption is prohibited by D. C. Code 1967, §47-801b, since the property is used to secure rental income for Petitioner.

Officers of the Petitioner and the Minister of the Mt. Zion Baptist Church testified on behalf of the Petitioner. In addition, Petitioner offered a number of exhibits which were admitted without objection.[1/] The Respondent offered no evidence.

1/ The exhibits introduced into evidence were a copy of the assessment against the property (Ex. A); a picture of the property (Ex. B); letter of March 25, 1971, from the Chief of Property Assessment Division to Petitioner advising that the property had been returned to the tax rolls (Ex. C); Deed to the property recorded June 20, 1918, to the Evangelical Lutheran Church of the Incarnation (Ex. D); Articles of Dissolution of the Evangelical Lutheran Church of the Incarnation of Washington, D. C. filed on December 30, 1968 (Ex. D); Deed to property recorded March 17, 1969, from the Evangelical Lutheran Church of the Incarnation of Washington, D. C. to Petitioner (Ex. F); Lease Agreement entered into by Petitioner and Mt. Zion Baptist Church dated April 3, 1969, together with renewal (Ex. G); Claim for Exemption from Recordation Tax dated March 12, 1969 (Ex. H); Charter, Constitution and Bylaws of the Maryland Synod of the Lutheran Church in America (Ex. I); and Bulletin of Mt. Zion Baptist Church for November 7, 1971 (Ex. J).

I

The Court makes the following:

FINDINGS OF FACT

1. Petitioner is a religious society incorporated under the laws of the State of Maryland with principal address at 7604 York Road, Baltimore, Maryland.

2. Petitioner is a nonprofit religious corporation or society organized for the purpose of administration of public worship in accordance with the doctrines of the Lutheran Church in America; the Petitioner geographically includes Maryland, District of Columbia, Delaware, and parts of Virginia.

3. The tax in controversy is real estate tax levied on Lot 65 in Square 2805, improved by premises known as 1443 Gallatin Street, N.W., Washington, D. C., for the period commencing July 1, 1970; the levy for fiscal year 1971 is $1,469.96, with penalty of $88.20, or total levy of tax and penalty of $1,558.16.

4. Petitioner filed a Claim for Exemption from the District of Columbia Real Estate Deed Recordation Tax on March 12, 1969, stating that the property was a church and would be used primarily and regularly for religious worship, study, training and missionary activities.

5. Petitioner was notified by letter dated March 25, 1971, from the Chief, Property Assessment Division, that the property was being returned to the tax rolls of the District of Columbia "effective July 1, 1970."

6. As early as September 20, 1889, St. Mark's Evangelical Lutheran Congregation was incorporated under

the laws of the District of Columbia. It acquired title to the subject property in 1918. St. Mark's together with the Evangelical Lutheran Church of the Incarnation, utilized subject property for public worship in accordance with the doctrines of the Lutheran Church continuously and uninterruptedly until dissolution of both religious corporations on January 3, 1969.

7. On March 17, 1969, pursuant to the provisions of the Constitutions of St. Mark's and Incarnation Lutheran churches, the subject property and improvements was conveyed by Incarnation in its entirety, including furnishings and fixtures, unincumbered, to the Petitioner. It has been owned by Petitioner continuously since March 17, 1969.

8. On April 4, 1969, the subject property was leased by Petitioner to the Mt. Zion Baptist Church, lessee, an unincorporated religious association organized and existing in the District of Columbia, for the sum of $235.00 per month; said rental is computed on a basis sufficient only to permit landlord to make capital repairs to the structure and permanent fixtures, and to pay insurance against fire, casualty, liability, and other hazards, as required by the lease. Under the terms of the lease the Mt. Zion Baptist Church has an option to purchase the property, and if such option is exercised rent paid to date by Mt. Zion Baptist Church is to be credited to and applied against the total purchase price of the property.

9. The property in question has, since April 4, 1969, belonged to a religious corporation or society

(The Maryland Synod of the Lutheran Church in America) and has primarily and regularly been used by the Mt. Zion Baptist Church for religious worship, study, training and missionary activities, as those terms are used in D. C. Code 1967, §47-801a(n).

II

The Court finds as a fact that the Petitioner is a religious corporation or society and that the user of the property, Mt. Zion Baptist Church, primarily and regularly uses the property for religious worship, study, training and missionary activities.

There is no requirement that the property must be owned and used by the same entity. In Calvery Baptist Church Extension Association v. District of Columbia, 81 U.S. App. D. C. 330, 158 F.2d 327 (1947), the Calvery Baptist Church claimed that property owned by it but used by the Extension Association, a separate corporation, was exempt. The court in rejecting the District's argument that there must be a concurrence of ownership and use stated (81 U.S. App. D. C. at 331, 158 F.2d at 328:

> The controlling section (n) sets up but two elements in order that the property be exempt - (1) that the building belongs to a religious corporation or society, and (2) that it is primarily and regularly used for religious worship, study, training and missionary activities. It is not disputed that both the Church and the Extension Association are within the terms of the first of these elements and it is clear to us that the entire use of the building is within the second.

The result is the same in the instant case, the elements of ownership and use have been met.

Respondent argues that the two cases should be distinguished since here the property is being used by a church and therefore, if exempt, can only be exempt under §47-801a(m). That section exempts real property owned by churches and appears to require that the property must be owned by a church and used by its congregation. The simple answer is that Petitioner is not a church, does not claim to be a church and does not claim exemption under §47-801a(m) for obvious reasons.

Although §47-801a(m) is not applicable to the instant case, it is noted that Congress in enacting both §§47-801a(m) and 47-801a(n) intended the sections to be complementary. It was recognized that certain organizations which could not be classified as churches should nevertheless be exempt because of the nature of the work performed therein. See H. Rep. No. 2635, 77th Cong. 2d Sess., pp. 4-5. Congress by enacting §47-801a(n) intended to provide for situations similar to those in this case.

The Court is satisfied that the property is exempt under D. C. Code 1967, §47-801a(n).

III

Although the property is exempt under §47-801a(n), the petitioner secures rent and income on the property by leasing that property to Mt. Zion Baptist Church. D. C. Code 1967, §47-801b provides:

> If any building or any portion thereof, or grounds, belonging to and actually used by any institution or organization entitled to exemption under the provisions of sections 47-801a and 47-801c to 47-801f are used to secure a rent or income for any activity other than that for which exemption is granted such building, or portion thereof, or grounds, shall be assessed and taxed

In Howard University v. District of Columbia, 81 U.S. App. D. C. 40, 155 F.2d 10 (1946), property owned by the University but rented out to private tenants was held taxable in view of §47-801b even though the University used the profits for educational purposes. There, the court stated (81 U.S. App. D. C. at 41, 155 F.2d 11):

> This brings us, then, to the question whether the property here is used only for 'the education of youth in the liberal arts and sciences,' for that, as all agree, is the stated purpose of incorporation. The precise problem has not heretofore been raised or decided in this jurisdiction, but the vastly preponderating weight of authority elsewhere, under tax exemption statutes similar, or so nearly similar as to amount to the same thing, is that exemption from taxation is not allowable when the property is rented for income, even though the income is, or is to be, devoted (indirectly) to educational purposes. In short, that it is the use to which property is put and not the use to which the profits from its use are put which determines the right to exemption. And to this, perhaps, should be added that it is the present use and not the intended use in the future which is controlling. Emphasis in original Opinion.

See also D. C. v. Vestry of St. James Parish, 80 U.S. App. D. C. 314, 153 F.2d 621 (1946).

Notwithstanding the holding in Howard University v. District of Columbia, supra, this Court concludes that the Petitioner's property remains exempt. The fact that rent or income is secured from exempt property is not, standing alone, sufficient reason to assess and tax the property. The crux is the use of the property, and not the fact that income may be derived from the property.

There is no evidence that the Petitioner is obtaining a profit even though rent is paid by the church, in

fact, the evidence is to the contrary. Moreover, the church has an option to purchase with all rent being applied towards the purchase price.

More important is that §47-801b provides that the property should not be taxed unless the activity for which the property is used is for something other than "that for which the exemption is granted." The exemption referred to in the context of this case is the exemption granted under §47-801a(n). The property here is being used for an activity consistent with the exemption granted by Congress under that section, and therefore, should not have been returned to the tax rolls.

The Court holds as a matter of law that the property owned by the Petitioner which is the subject of this action is exempt and that the real estate assessment for taxes and penalties was improper.

Dated: May 1, 1972.

JOHN GARRETT PENN
Judge

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