Opinion No. 1218

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Tax Division

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TAX DIVISION

JAN 17 1984

THE FIRST SUPERET BRANCH CHURCH OF WASHINGTON, D.C., INC.,	:	
Petitioner,	:	
v.	:	Tax Docket No. 3193-83
DISTRICT OF COLUMBIA,	:	
Respondent.	:	

ORDER AND OPINION

This matter came before the Court for trial on the merits on November 21, 1983. Petitioner appeals from denial of a full exemption for real property. The exemption is sought pursuant to D.C. Code (1981) provisions exempting churches, §47-1002(13), places of religious training or study, §47-1002(14), and pastoral residences, §47-1002(15). The District of Columbia contends that only a partial exemption is warranted.

The tax in controversy is the property tax for 1983 in the amount of $1,125.24, the assessment based upon a 50 percent exemption for petitioner's property.

This Court has jurisdiction to hear this appeal pursuant to D.C. Code (1981) §§11-1201 and 47-1009.

I. FACTS

Petitioner, the First Superet Branch Church of Washington, D.C., Inc., is a nonprofit corporation organized in the District of Columbia. It holds tax exempt status for purposes of District of Columbia sales tax, and for purposes of federal income tax under Internal Revenue Code §501(c)(3).

The only real property owned by petitioner, and the subject of this action, is located at 1420 Ingraham Street, Northwest in Washington, D.C. There petitioner holds a range of religious activities, including Sunday worship services, Sunday school, weekly religious study, daily noon prayer services, and personal counseling. The facility also serves as a meeting place throughout the year for congregation members and other Superetists who come from out of town for religious seminars, celebrations and study.

Petitioner houses its four ministers and one retired minister on the subject property. There is one building on the property with four levels, including basement and attic. Three of the Church's ministers and one recently retired minister reside on the second floor, which has four bedrooms. Another minister has a bedroom in the attic. The main floor contains a public reception area, a chapel, a room used both as a classroom and the Church's business office, the Prince of Peace Movement Hall, a public bathroom and a kitchen. The basement contains space for storing Church records and property, a room used as a minister's study, and two small guest rooms for Superetists visiting from out of town. An outdoors patio, prayer garden and grotto are used during warm weather for religious services and ceremonies.

The Church derives its financial support through tithes and other donations made by its members and guests. The ministers who occupy the Church's property contribute to its annual operating expenses. Petitioner estimates that the ministers collectively contributed $6,110 in 1980, or 43 percent of the operating costs, and $6,395 in 1981, or about one third of operating costs. Testimony at trial established that the congregation used to be located at a members' home. The group moved to the Ingraham Street property in the year 1973 in order to have more time and space for the work of the Church.

Petitioner was incorporated on September 12, 1963, to operate a church and for similar purposes. The property that is the subject of this suit was acquired September 18, 1963. Thus, petitioner for twenty years has used the Ingraham Street property for religious worship, study and as a residence for its ministers. The petitioner holds no other real property for any other purposes, including housing of its ministers.

II. PROCEDURAL BACKGROUND

On July 17, 1979, petitioner applied for a property tax exemption. A 50 percent exemption was granted for the property's use as a church, pursuant to D.C. Code (1973) §47-801(m), now D.C. Code (1981) §47-1002(13). Petitioner has received this partial exemption since tax year 1980.

On January 21, 1982, petitioner applied for a 100 percent real property tax exemption. While the application was pending, an undated property tax assessment for tax year 1983 was received and paid by petitioner. A full exemption was denied by the District in a letter dated December 15, 1982, stating that there are "no provisions in the D.C. Code to exempt living quarters for additional or former ministers."

In its application for full exemption, counsel for petitioner observed that the existing partial exemption probably was based upon a mistaken response on an earlier application. That application inquired whether the property was income-producing. Petitioner answered "yes," in apparent reference to the resident ministers' contributions toward the upkeep of the Church property. In the application for which denial is now on appeal, petitioner answered "no" to the same question.

The relevant tax exemptions are contained in D.C. Code (1981) §47-1002, as follows:

> (13) Churches, including buildings and structures reasonably necessary and usual in the performance of the activities of the church. A church building is one primarily and regularly used by its congregation for public religious worship;
>
> (14) Buildings belonging to religious corporations or societies primarily and regularly used for religious worship, study, training, and missionary activities;
>
> (15) Pastoral residences actually occupied as such by the pastor, rector, minister, or rabbi of a church: Provided, that such pastoral residence be owned by the church or congregation for which said pastor, rector, minister, or rabbi officiates: And provided further, that not more than 1 such pastoral residence shall be so exempt for any 1 church or congregation[.]

The material facts of this case are not in dispute. The District does not contend that the property is not used for the activities specified by petitioner. Rather, the breadth and exclusivity of the statutory exemptions is at issue. This case presents the question whether full exemption is precluded by use of property for more than one exempt purpose. More specifically, the Court must determine whether the resident ministers' contributions to the church constitute income or rent precluding full exemption.

III. ANALYSIS

Petitioner claims that it is entitled to full tax exempt status as a church, D.C. Code (1981) §47-1002(13), a place of religious study and training, §47-1002(14), and a pastoral residence, §47-1002(15). Respondent's bases for disputing a full tax exemption have shifted during the course of this litigation. In the notice of denial of a full exemption, the District alluded to the fact that several ministers were in residence on the premises, and one of them was retired. At trial the District appeared to rely primarily on two contentions: that the petitioner did not come fully within any one of the statutory exemptions cited above, and that the ministers' contributions to the Church made them paying tenants and prevented a finding that the property is used exclusively for religious purposes. This opinion addresses the arguments advanced at trial.

A. Specified Exemptions

Under D.C. Code Sections 47-1002(13) (church) and (14) (place of study), exempt property must be "primarily and regularly used" for the stated purposes. Subsection (15) contains no such qualifications, although a conceivable reading of the provision is that it exempts only property exclusively used as a pastoral residence. This reading would preclude simultaneous exemption under subsection (15) and under subsections (13) or (14).

There is little case authority in the District of Columbia for interpreting the exemptions at issue. However, petitioner is correct in its assertion that exempt uses need not fall within one, and only one, statutory provision. District of Columbia v. Maryland Synod of the Lutheran Church, 307 A.2d 735 (D.C. 1973) held that property owned by a religious organization and leased to an unrelated church was exempt. After considering the exemptions provided by the predecessors to Sections 47-1002(13) and (14), the Court of Appeals stated, "The two Code sections involved are not mutually exclusive but are complementary." 307 A.2d at 736. According to the Court's opinion in Maryland Synod,

buildings held by religious organizations and used for other than strictly worship purposes were made exempt based upon the "character of the work carried on within." Id., quoting H.R.Rep. No. 2635, 77th Cong., 2d Sess. (1942). The Court's construction in Maryland Synod indicates that the exemption statute is not to be construed too literally. Thus, in statutory provisions qualifying an exempt use, "primarily" does not mean exclusively. Furthermore, an exclusivity requirement need not be implied in provisions which are silent on that matter.

Other jurisdictions have reached similar conclusions, based upon statutes not unlike the District's. See, e.g., Application of Faith Church of God Full Gospel Mission, Inc., 282 N.Y.S.2d 370 (Sup. Ct. 1967) (house used for worship, clergy residence, and meetings for religious purposes was exempt); Jersey City v. Beth-El Baptist Church, 12 A.2d 152 (N.J.St.Bd. of Tax App. 1940) (building with first floor devoted to worship, second floor to minister's dwelling, was exempt). In Beth-El Baptist, the court stated,

> It does not appear to us that any principle of statutory construction should operate to deprive the respondent of the tax exemption obviously intended by the legislature in such a situation, by mere reason of the fact that one building houses both its church and its parsonage.

Id.

See also City of East Orange v. Church of Our Lady of the Blessed Sacrament, 50 A.2d 390 (N.J. Div. of Tax App. 1946) (clergy residence and place of worship), Syracuse Center of Jehovah's Witnesses, Inc. v. City of Syracuse, 297 N.Y.S. 587 (Sup.Ct. 1937) (place of worship and shelter for members). Accord, Congregation Kollel Horabonim v. Williams, 422 N.Y.S.2d 909 (N.Y. 1979) (statutory exemption for clergy residence was independent of any possible exemption for church).

The Court concludes that petitioner's use of the property for more than one exempt purpose does not preclude full exemption.

B. Contributions from Ministers

The only remaining matter is the effect, if any, of the ministers' contributions on petitioner's entitlement to a full exemption. The contributions cannot properly be characterized as rent or income, in the sense of money received from income-producing property. Instead, they represent tithes used toward general Church expenses, and not used strictly for property maintenance or for profit. The testimony at trial established that if the ministers were unable to contribute at any given time, this fact had no consequence as to whether they would continue to reside on the property.

Furthermore, even rent or income secured from property, owned by a religious organization and used for religious purposes, is not alone a sufficient basis to preclude exemption. District of Columbia v. Maryland Synod of the Lutheran Church, supra, 307 A.2d at 737. There, the Court of Appeals determined that collection of rent by a religious entity leasing property to a church had a sufficient "nexus to the character of the property's use" to justify an exemption. Id. ("The crux is the use of the property, and not the fact that income may be derived from the property." (Emphasis in original.))

A New York lower court made a similar determination in the Syracuse Center case, 297 N.Y.S. at 590. In that case, actual rent--though nominal--was charged the numerous congregation members boarding at property held by a religious corporation. The property was used for shelter, instruction and worship. If not for contributions that supplemented the rent, the property would have operated at a loss. The court thus concluded:

> From these facts, there appears no primary or motivating purpose on the part of the plaintiff to carry on its operations and activities for material gain.
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> * * *
>
> Obviously, it is the nature of the use of the real property which controls . . . whether a particular piece of property owned by a [religious] corporation . . . is in fact exempt.

Id. at 590.

The point is underscored by local case authority. In District of Columbia v. Vestry of St. James Parish, 80 U.S.App.D.C. 314 (D.C. Cir. 1946), the District assessed property which served as the residence for a church rector. Because the minister was paid a "meager salary," he rented three vacant rooms to church members. Their rent payments made it possible to cover the expenses of maintaining the rectory, the Court found. Thus, the property was held to be entitled to a full exemption as a pastoral residence, despite the fact that non-ministers resided there and income was received from them. Id. at 314-15. Neither the facts, nor case authority, supports denial of an exemption for petitioner's property.

IV. CONCLUSION

Petitioner's property, 1420 Ingraham Street, Northwest, is entitled to full exemption pursuant to D.C. Code §§47-1002(13), (14), and (15).

Wherefore, it is this 15 day of January, 1984,

ORDERED that the tax assessment for the subject property for tax year 1983 be, and hereby is, cancelled, and it is

FURTHER ORDERED that all property taxes paid by petitioner for tax year 1983 be refunded to petitioner.

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