BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	Docket No.: 68771
Petitioner: **FIRST PRESBYTERIAN CHURCH,** v. Respondent: **PROPERTY TAX ADMINISTRATOR.**	

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on December 8, 2016, James R. Meurer and Debra A. Baumbach presiding. Petitioner was represented by Jefferson Cheney, Esq. Respondent was represented by Robert Dodd, Esq Petitioner is protesting Respondent's denial of property tax exemption for tax years 2014 and 2015 for the subject property.

The parties stipulated to the admission of Petitioner's Exhibits 1-12 and Respondent's Exhibits A-H.

Subject property is described as follows:

1118 Bennett Ave, Glenwood Springs, Colorado
Garfield County Schedule No. 311880

Background

The subject property consists of a single-family residence owned by Petitioner, First Presbyterian Church. The residence is located three blocks from a parcel where the Petitioner-owned church building is located. In addition to the church building, the church parcel used to include an old manse (1908 year of construction) where the church minister resided.

Petitioner purchased the subject property in 1966 when the congregation agreed that a more updated manse was necessary to attract new clergy. The old manse on the church parcel referenced above was demolished, and in its place the house located on the subject parcel began to serve as the new manse. From 1966 until 2001, the subject was occupied by the church's minister who resided there rent-free as part of his compensation package.

According to the information provided by Petitioner, in 2003 the minister that occupied the subject for 20 years retired, and the new minister opted to own his own home rather than live at the manse. Since 2001 and during the tax years in question, as the subject was no longer occupied by the clergy, it has been rented out as a single-family residence at a market price. The revenues from the rental have been used entirely for church-related purposes. The current tenant provides occasional cleaning services to the church in return for a reduction in rent. Other than providing cleaning services, the tenant is not affiliated with the church and no part of the subject parcel is used by the church.

According to Petitioner, although the subject has been granted tax exempt status for a number of years in the past (the church has no record of how many years between 1966 and 2001 the manse was tax-exempt), as of 2001 the subject had lost its exempt status.

On December 12, 2014, Petitioner filed an Application for Exemption of Property Owned and Used for Religious Purposes. Under the "Brief Description of Usage" section of the Application for Exemption, Petitioner stated that "without the rental income there would not be sufficient income to sustain the operating budget." *See* Respondent's Exhibit A. On December 23, 2015, the Property Tax Administrator ("PTA") issued a Tentative Determination denying exempt status to Petitioner reasoning that the "[u]ser's use does not qualify for exemption." *See* Respondent's Exhibit B. On January 19, 2016, the PTA issued a Final Determination confirming its tentative denial of exempt status. *See* Respondent's Exhibit C. Following the PTA's denial, Petitioner appealed to the Board of Assessment Appeals.

Governing Statute

Section 39-3-106(1) and (2), C.R.S., titled as *Property – religious purposes – exemption – legislative declaration*, provides for tax exemptions for religious organizations:

> (1) Property, real and personal, which is owned and used solely and exclusively for religious purposes and not for private gain or corporate profit shall be exempt from the levy and collection of property tax.
>
> (2) In order to guide members of the public and public officials alike in the making of their day-to-day decisions, to provide for a consistent application of the laws, and to assist in the avoidance of litigation, the general assembly hereby finds and declares that religious worship has different meanings to different religious organizations; that the constitutional guarantees regarding establishment of religion and the free exercise of religion prevent public officials from inquiring as to whether particular activities of religious organizations constitute religious worship; that many activities of religious organizations are in the furtherance of the religious purposes of such organizations; that such religious activities are an integral part of the religious worship of religious organizations; and that activities of religious organizations which are in furtherance of their religious purposes constitute religious worship for purposes of section 5 of article X of the Colorado constitution. This legislative finding and declaration shall be entitled to great weight in any and every court.

Parties' Arguments

Petitioner contends that although the use of the subject residence as a rental property is inherently non-religious, the use of the income derived from renting is. in fact, religious because all of rental revenue is applied to sustain the church's budget. Petitioner argues that it would be difficult if not impossible to keep the church doors open without the profit from the manse which constitutes 15% of the church's total income. According to Petitioner, during five to six months per year, member giving does not meet operating expenses, which include compensation for clergy, maintenance, etc., which have to be supplemented by the rental income from the manse.

In support of its argument, Petitioner points out that Section 39-3-106(1), C.R.S., in addition to referring to a tax exempt status of real property, expressly contemplates tax exemption for personal property as well (*e.g.* "Property, real and personal, which is owned and used solely and exclusively for religious purposes and not for private gain or corporate profit shall be exempt from the levy and collection of property tax.") (Emphasis added). According to Petitioner, money collected as rental income from the subject is used for sustaining the church budget and as such is a tax-exempt personal property as contemplated by the statute.

In addition, Petitioner cites Section 39-3-106(2), C.R.S. which states that "activities of religious organizations which are in furtherance of their religious purposes constitute religious worship" and argues the rental income collected from the former manse is funneled directly into the church budget and is therefore used "in furtherance of [the church's] religious purposes." Petitioner provided a copy of its 2016 Operating Budget and 2017 Budget Proposal to illustrate that the income from the manse is used in covering church's expenses, and not for private or corporate gain. (*See* Petitioner's Exhibit 12).

According to Petitioner, the income derived from the manse is integral in fulfilling the church's mission. Petitioner provided a copy of the Mission Study, dated October 1, 2012, wherein the mission statement of the First Presbyterian Church is expressed as "A vital, historic community for worship, fellowship and joy, grounded in Jesus Christ and united through love, growth, service and forgiveness." *See* Petitioner's Exhibit 8.

Further, Petitioner argues that property tax exemptions based on religious use should not be narrowly construed per *Maurer v. Young Life*, 779 P.2d 1317 (Colo. 1989). And finally, citing the holding in *General Conference of Church of God – 7th Day v. Carper*. 557 P.2d 832 (Colo. 1976), that a distinction must be made between charitable and religious exemptions, Petitioner urged the Board to disregard the line of cases that deal with charitable exemptions referenced by Respondent in denying Petitioner's request for exemption based on religious use.

Respondent contends that the focus of Section 39-3-106, C.R.S. is the actual use of the real property for which religious exemption is sought, and not, as Petitioner suggests, on the use of the money derived from the use of such property. According to Respondent, money is not a taxable personal property and therefore not the type of "personal property" referenced in Section 39-3-106, C.R.S. Because the subject property is used as a rental and not "solely and exclusively for religious

purposes," as contemplated by Section 39-3-106, per Respondent, it does not qualify for a religious purposes exemption.

Respondent cited several cases in support of its denial of religious exemption for Petitioner's property. In *Spears' Free Clinic and Hospital for Poor Children v. Wilson, Manager of Revenue, etc.*, 84 P.2d 66 (Colo. 1938), a charitable non-profit organization owned two apartment houses which were not used by the corporation itself but were rented out to tenants. All the income from the rentals was devoted to the organization's charitable purposes. The Court denied charitable exemption stating that "[i]nasmuch as the corporation does not occupy the property, it was not entitled to the exemption thus provided . . ." *Id.*

Another case cited by Respondent, *City Temple Institutional Society of Denver v. McGuire, Manager of Revenue*, 87 P.2d 760 (Colo. 1939), cited the holding in *Wilson* in denying exemption to a charitable organization that rented out an apartment building which it owned to unrelated third parties and used the income from the rentals exclusively for charitable purposes.

Respondent also relied on the holding in *Hanagan v. Grand Lodge*, 80 P.2d 328 (Colo. 1938), where a charitable organization owned land that had been rented out and the proceeds were used to pay interest and mortgage payments on the property. The Court denied exemption stating that the record did not support the finding that "the use of the irrigated land for rental purposes, and the use of the revenues therefrom to pay off the indebtedness on the property, was or could be a case of mere incidental use or incidental income from the property otherwise reasonably necessary to effect the objects of the institution."

Finally, Respondent next contends that even if the subject did otherwise qualify for an exemption, the amount exempted could not exceed $10,000 of gross rental income per Section 39-3-106.5, C.R.S. Respondent contends that the income from the subject at $22,200 ($1850/month) is over twice the statutory limit.

Analysis

Article X, Section 5 of the Colorado Constitution provides, "[p]roperty, real and personal, that is used solely and exclusively for religious worship . . . shall be exempt from taxation." Section 39-3-106, C.R.S. states that "[p]roperty, real and personal, which is owned and used solely and exclusively for religious purposes . . . shall be exempt from the levy and collection of property tax."

Under Section 39-3-106(2), C.R.S., "many activities of religious organizations are in the furtherance of the religious purposes of such organizations" and "activities of religious organizations which are in furtherance of their religious purposes constitute religious worship for purposes of section 5 of article X of the Colorado constitution."

Consistent with these constitutional and statutory mandates, Section 39-2-117, C.R.S. which designates the process for requesting a religious exemption, instructs that a property owner must include on the application for exemption a declaration of its religious mission and religious purposes, as well as the uses of the property that are in furtherance of such mission and purposes. The stated

uses of the property are presumed to further the religious mission and purposes of the property owner. Section 39-2-117(1)(b)(II), C.R.S. This presumption was designed to "prevent public officials from inquiring as to whether particular activities of religious organizations constitute religious worship" – the kind of parsing that violates the Establishment Clause because it fosters excessive government entanglement with religion. Section 39-3-106(2). C.R.S; *Grand County Board of Commissioners v. Colo. Property Tax Administrator, et al.*, 16 COA 2, ¶¶9-10, hereinafter referred to as "*YMCA II.*"

Therefore, in determining whether religious purposes property tax exemption is available, instead of inquiring whether a particular activity of religious organization constitutes religious worship, which is prohibited by the Establishment Clause, the property 's uses must be considered in light of the owner's religious mission and purposes, consistent with Section's 39-2-117(1)(b)(II), C.R.S. rebuttable presumption that the uses are actually in furtherance or the owner's religious purposes. *See YMCA II*, 16 COA 2, ¶ 9. Hence, the relevant question is not "whether the use of the property inherently or objectively religious?" but rather "does the use of the property further the religious mission and purposes of the property owner?" If the answer is yes, the property is used for religious worship and is exempt from taxation. *Id.* at ¶ 11.

In *Maurer v. Young Life*, the Court explained that, although courts look to the "use to which the property is put," the character of the property owner is relevant to "illuminate the purposes for which the property is used." 779 P.2d at 1331. By considering the character of the property owner as a religious organization, the fact finder could possibly conclude that even "nonreligious" activities further the property owner's religious purposes. *Id.*

In *Larimer County Board of Commissioners v. Colo. Property Tax Administrator*, 2013 COA 49, hereinafter referred to as "*YMCA I*," the Court of Appeals reversed the BAA's decision denying exemption to the YMCA's property consisting of cabins, vacation homes, lodge rooms and camp sites, as well as libraries, conference facilities, auditoriums, dining halls, a swimming pool, a skate park and skating rink and other recreational facilities used by the YMCA's paying guests. In denying the exemption, the Board reasoned that the facilities were open to the general public regardless of faith or lack of faith, and they were marketed without any mention of religion. The BAA also found that many guests did not participate in any overtly Christian activities or believe that they are ensconced in a Christian environment. Noting that the BAA did not discuss whether the YMCA's activities were in furtherance of the YMCA's religious purposes or whether the activities were an integral part of the YMCA's religious worship, the Court of Appeals found that the BAA did not apply the proper legal standard and, therefore, erred as a matter of law. The Court remanded the matter back to the BAA with instructions to review the property owner's application and evidence to determine whether the owner's use of the property was for a religious purpose, consistent with the owner's declaration of its religious mission and purpose.

On remand, the BAA examined the YMCA's declaration of its religious mission and purposes and determined that the actual use of the property was in line with and indeed in furtherance of the organization's stated religious purposes. *YMCA II*. 2016 COA 2, ¶¶16-17. The BAA determined that YMCA's religious mission and purposes, based on sincerely-held religious beliefs, were broad enough that each of the uses furthered the organization's religious purposes.

Finally, the Board found that the YMCA's property was not being used for private gain or corporate profit; it operated at a loss and depended on millions of dollars in contributions to remain solvent. *Id.* at ¶¶ 16-17.

In both decisions, *YMCA I* and *YMCA II*, the Court reiterated that when the qualifying organization is religious in nature, the taxing authority should exempt from taxation not just religious uses or activities, but also those that are incidental to the primary purposes of the organization. *See YMCA I*, 2013 COA 49, at ¶ 37 ("Colorado has adopted a broad view, exempting "necessarily incidental" property and activities of the religious organization entitled to a tax exemption"); and YMCA II, 2016 CAO 2, at ¶ 33 ("If the qualifying organization is religious in nature, the court instructed, the taxing authority should exempt from taxation not just religious uses or activities, but also those that are incidental to the primary purposes of the organization.")

The holdings in *YMCA I* and *YMCA II* are consistent with the Colorado Supreme Court's decision in *Maurer v. Young Life*, where the Court granted religious purposes exemption finding that any nonreligious aspects of the outdoor activities (maintaining horses for use in the organization's riding activities for the children) sponsored by a religious organization were "necessarily incidental" to the organization's use of the properties for religious worship and reflection. 779 P.2d at 1332.

In *General Conference v. Carper*, 557 P.2d 832, 834 (Colo. 1976), the Court granted exemption to a facility owned by a religious organization and used exclusively for the organization's administrative and publishing activities. The Court found that publishing of religious materials can be an aspect of religious worship, and property used for publication purposes could be exempt based on use incidental to religious worship.

Similarly, in *Bishop & Chapter of Cathedral of St. John the Evangelist v. Treasurer of Arapahoe County*, 68 P. 272 (Colo. 1901), the Court held that a use incident to the main purpose for which property is held is not enough to lose tax exemption. Hence, occupation of part of school premises by a bishop and his family does not render the property subject to taxation so long as his dominant purpose in residing therein is to carry out the educational objects of the institution.

However, the courts have previously denied exemptions to properties held for the sole purpose of revenue production, finding that such use is not considered "incidental" to the religious purposes for which the property is held. In *Creel v. Pueblo Masonic Bldg. Ass'n*, 68 P.2d 23 (Colo. 1937), the court denied exemption to a charitable organization that owned a five-story building, three floors of which were used for rental purposes and which were not directly or indirectly used by the organization for any other purpose than that of producing revenue. The court held that the case was not one of mere incidental use or incidental income from the property that was otherwise reasonably necessary to carry out the objectives of the institution, even though the evidence was undisputed that the revenue produced by the rental was used solely for charitable purposes.

Similar to the facts in *Creel*, in *Hanagan v. Grand Lodge*, 80 P.2d 328 (Colo. 1938) a charitable organization purchased 160 acres of land to be used as a sanitarium for aged and infirm. The sanitarium and related buildings occupied 45 out of 160 acres and were never assessed or taxed by the county. The remaining 115 acres of irrigated land had been rented out and the proceeds were

used to pay interest and mortgage payments on the property. The charitable organization sought to enjoin taxing authorities from assessing and collecting taxes on any part of the 160-acre property. The Court denied exemption to the 115 acres stating that the record did not support the finding that "the use of the irrigated land for rental purposes, and the use of the revenues therefrom to pay off the indebtedness on the property, was or could be a case of mere incidental use or incidental income from the property otherwise reasonably necessary to effect the objects of the institution."

Based on the above-described principles, the Board must consider Petitioner's uses of the subject property in light of its declared purposes and mission statement. Petitioner provided a copy of the Mission Study, dated October 1, 2012, wherein the mission statement of the First Presbyterian Church is expressed as "A vital, historic community for worship, fellowship and joy, grounded in Jesus Christ and united through love, growth, service and forgiveness." *See* Petitioner's Exhibit 8. At page 7 of the Mission Study, under subheading "Our mission" the mission of the First Presbyterian Church is further described as follows:

> While honoring our historic heritage and traditions, and continuing to address our existing congregation's needs, we want our church to grow in both size and relevance to our community, and to the larger world beyond. We want our congregation to feel nurtured and enlightened by our worship and fellowship together, and to be inspired by the love of our Lord Jesus Christ to share his teachings with, and serve our community.

In addition, under the "Our goals" section of the Mission Study, Petitioner identified the following goals for the future of the church:

- Aim to increase membership by at least 5% annually
- Expand youth programs and activities
- Consider alternate youth-oriented services and times
- Provide additional support to older church members
- Expand fellowship programs encouraging members to get to know each other better
- Continue support of community programs such as Lift Up, Youth Zone, Yampah Teen Parents program, Alcoholics Anonymous, Advocate Safe House, the Archaeology Club, etc.
- Increase contact and cooperation with other local congregations
- Increase public profile for the church

In the Application for Exemption of Property Owned and Used for Religious Purposes, filed with the County Assessor, in section 10 titled as "Uses in furtherance of owner's religious mission," Petitioner indicated "Rental" for NAME OF USER and under BRIEF DESCRIPTION OF USAGE included the following statement: "Without the rental income there would not be sufficient income to sustain the operating budget, tithe 10% and carry out our mission statement. Financial records provided to substantiate this statement." In section 11 of the Application, titled as "Uses for non-profit religious, charitable or school purposes NOT in furtherance of owner's religious mission," Petitioner listed "Renter" under NAME OF USER and under the BRIEF DESCRITION OF USAGE,

summarized the following description of usage "(See page 5 of Mission Study) During economic slump, renter worked of past debt cleaning the church. After his debt was cleared he continued cleaning and his rent was lowered. This arrangement provides affordable housing for one family."

Petitioner provided a detailed breakdown of its budget statement, including the church's income and expenses. Over 15% of Petitioner's total budgeted income ($133,800) is attributed to the rental income ($22,200) derived from the subject property. The entirety of the income derived from the rental is funneled directly into the church's budget. The church's main revenue is derived from the parishioners' pledges and the entirety of the income is spent on church and worship-related expenses. While majority of the income is spent on a modest compensation for the pastor, the remainder is parceled out between pulpit supplies, bulletins, sheet music, piano tuning, worship arts director, pension/medical, mileage reimbursement, continued education, books and discretionary expenses. The budget shows the church running at a loss as its expenses ($147,130) exceed its income by $13,330.

Conclusion

An applicant's declaration of its religious mission and religious purposes may be challenged on three grounds: (1) the religious mission and purposes are not religious beliefs sincerely held by the applicant-property owner; (2) the property being claimed as exempt is not actually used for the purposes set forth in the application; or (3) the property is used for private gain or corporate profit. *YMCA II*, ¶ 10, citing Section 39-2-117(1)(b)(II), C.R.S.

Based on the evidence in the record, the Board believes that the religious mission and purposes outlined in Petitioner's Application for Exemption of Property Owned and Used For Religious Purposes are religious beliefs sincerely held by Petitioner. The Board also believes that the subject property is not used for private gain or corporate profit.

However, the Board was not convinced that the subject property was actually used for the religious purposes set forth in the application. Petitioner's religious mission and purposes were described in section 9 of the application, where Petitioner referenced its mission study and mentioned the humanitarian work that it conducts in terms of community outreach. Raising money from a rental property was not described as a religious purpose of the organization either in the application or the mission study. Indeed, the only mention of the rental property in the mission study was in the context of Petitioner's finances – not in the context of its mission, activities, community outreach or goals.

Additionally, no convincing evidence was presented that the tenant's actual use of the property furthered Petitioner's religious purposes. In fact, Petitioner listed the "renter" in section 11 of its application as a use that was NOT in furtherance of Petitioner's religious mission. Petitioner also did not provide the name of the tenant in the application (as required) and did not provide testimony from the tenant indicating that the tenant's actual use of the property furthered Petitioner's religious purposes.

In short, Petitioner's claim for a religious use exemption rests on Petitioner's rental of the subject property for revenue in order to supplement its budget. The Board was not convinced that using the property solely for generating revenue qualifies the property for exemption given Petitioner's religious mission and purposes. The Board believes that the charitable exemption cases cited by Respondent support this finding.

The Board was also not convinced that the Petitioner's rental of the subject property for the generation of revenue was an incidental use to the primary mission and purposes of the organization. Furthermore, even if such rental was an incidental use, such use failed to qualify the subject property for exemption given the limitations set forth in Section 39-3-106.5, C R.S.

ORDER:

The Petition is denied.

APPEAL:

If the decision of the Board is against Petitioner, Petitioner may petition the Court of Appeals for judicial review thereof according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-nine days after the date of the service of the final order entered).

If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it is a matter of statewide concern, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-nine days after the date of the service of the final order entered).

Section 39-2-117(6), C.R.S.

DATED and MAILED this 17th day of February, 2017.

BOARD OF ASSESSMENT APPEALS

James R. Meurer

68771

Debra A. Baumbach

Debra A. Baumbach

I hereby certify that this is a true and correct copy of the decision the Board of Assessment Appeals.

Milla Lishchuk