02-088

TAXATION: TAX EXEMPT PROPERTY — REVIEW OF LOCAL TAXES — REAL PROPERTY TAX.

Church property, which is in process of being developed for its intended use and is being used for certain church-related activities, may be tax exempt. Determination depends on question of fact reserved for local commissioner of revenue or other appropriate taxing official.

The Honorable Richard H. Black
Member, House of Delegates

The Honorable Thomas Davis Rust
Member, House of Delegates

November 19, 2002

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the Code of Virginia.

Issue Presented

You ask whether certain real property owned by the Leesburg Pike Community Church is tax exempt.

Response

It is my opinion that church property, which is in the process of being developed for its intended use and is being used for certain church-related activities, may be tax exempt. Such a determination, however, depends on a question of fact and is, therefore, reserved for the local commissioner of the revenue or other appropriate taxing official.

Facts

You enclose information with your request indicating that Leesburg Pike Community Church, which operates as The Community Church, was founded in 1982. The Community Church worships in a converted warehouse in a light industrial park in Sterling Park. This facility includes worship space, administrative offices, a day care center, a preteen outreach center, a school, and several other active ministries.

In late 1997, the church purchased 48.2 acres of land in Ashburn at the corner of Leesburg Pike and Route 641. The property is zoned
for office use and is buffered from the nearest residential community. The church had intended to begin the development and construction process on the property when the development plans, local government approvals, and financing were finalized.

In the spring of 2000, the church began the predevelopment process of hiring a survey/engineering team, a legal team, and an architect. The church has had preapplication discussions with Loudoun County but has not made formal application to the county to proceed with construction.

The church currently uses the church property to operate a summer camp; to organize athletics and youth recreational activities, such as softball and other outdoor sports; to conduct religious worship services on special occasions; and to hold special events, such as picnics, "family fun days," and Easter egg hunts.

**Applicable Law and Discussion**

Article X, § 6(a)(6) of the Constitution of Virginia authorizes the General Assembly to provide a tax exemption for "[p]roperty used by its owner for religious, charitable, patriotic, historical, benevolent, cultural, or public park and playground purposes." Section 6(a)(6) authorizes the General Assembly to establish the tax exemptions either by classification or by designation. Property is exempt by classification only if it fits within a class of property that the General Assembly has established as exempt.

Section 58.1-3617 provides that "[a]ny church, religious association or religious denomination operated exclusively on a nonprofit basis for charitable, religious or educational purposes is hereby classified as a religious and charitable organization." Section 58.1-3609(A) provides for a tax exemption by classification for the property owned by the organizations described in § 58.1-3617. Property tax exemptions are strictly construed. Exemptions to taxation are strictly construed against the party claiming the exemption. The classification set forth in § 58.1-3617 is applicable to The Community Church. The property of the church, therefore, is entitled to an exemption when used for its intended church purposes.

This Office previously has rendered opinions regarding tax exemptions for property held by charitable organizations that remained unused and has determined that such property is not tax exempt. In this case, the property is not developed, but the initial development process has started with the hiring of consultants and
the production of development plans. The property is also being used on an occasional basis for church services and other church-related activities. This Office consistently has determined that whether property in question is used exclusively for charitable, religious or educational purposes is necessarily a factual matter for determination by the commissioner of the revenue.\textsuperscript{7}

Your question requires a determination of fact that is reserved to the commissioner of revenue or other appropriate taxing official.\textsuperscript{8} Specifically, the commissioner of the revenue or other taxing official must determine whether the activities described are sufficient for the exemption to apply. While the commissioner of the revenue or other appropriate taxing official makes this determination in the first instance, a taxpayer may challenge any such determination. Generally, taxpayers assessed with local taxes may protest an assessment (1) within three years of the last day of the tax year in which the tax is assessed, (2) within one year of the tax assessment date, or (3) within one year from the date the Tax Commissioner makes a final determination under § 58.1-3981,\textsuperscript{9} whichever is later.\textsuperscript{10} Attorneys General consistently have declined to render official opinions when the request involves determinations of fact rather than questions of law.\textsuperscript{11} I am, therefore, unable to render an opinion regarding whether the activities you describe are sufficient for the exemption under § 58.1-3609 to apply.

**Conclusion**

Accordingly, it is my opinion that church property, which is in the process of being developed for its intended use and is being used for certain church-related activities, may be tax exempt. Such a determination, however, depends on a question of fact and is, therefore, reserved for the local commissioner of the revenue or other appropriate taxing official.


\textsuperscript{2}Id. § 58.1-3607 (Michie Repl. Vol. 2000).


\textsuperscript{4}Id. § 58.1-3609(B) (applying to post-1971 exemptions). Property tax exemptions that were in place prior to July 1, 1971, are construed liberally. See 1973-1974 Op. Va. Att’y Gen. 356, 357.


See id.; see also Op. Va. Att'y Gen.: 1998 at 138 (medical center owned by hospital corporation); 1984-1985 at 372, 373 (church property used for Easter sunrise services and recreational activities); 1973-1974 at 357, 358 (church property used for nursery schools).


Section 58.1-3981 pertains to correction of an erroneous local tax assessment by the commissioner of the revenue or other tax official performing the commissioner’s duties.
