



Renting Church Property – An Overview

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The information presented throughout these slides is a presentation and not intended to cover every legal matter that may arise on this topic. We strongly recommend consulting with an attorney for specific scenarios.

Introductions – Michael Best

- Marshall Schmitt
- Kellye Story
- Jesse Roberts

Introduction

Why are we here?



Tax Implications

Property tax
exemption issues



Introduction: Constitutional and Statutory Foundations

- a. In both Illinois and Wisconsin, property tax exemptions are statutory exceptions to the general rule of taxation. Taxability is presumed, and exemptions must be clearly proven by the applicant.
- b. The Illinois Constitution (Art. IX, §6) authorizes the General Assembly to exempt property used exclusively for school, religious, cemetery, and charitable purposes. This provision is not self-executing and requires legislative implementation.
- c. The Wisconsin Constitution does not contain a specific provision authorizing religious property tax exemptions. Instead, such exemptions are granted solely by statute—specifically, Wis. Stat. § 70.11(4).
- d. Illinois implements its constitutional authority through the Property Tax Code, including 35 ILCS 200/15-40, which governs religious exemptions.
- e. Wisconsin's religious property tax exemption is governed entirely by Wis. Stat. § 70.11(4), which exempts property owned and used by religious associations.

Property Tax Exemption Requirements

- a. In both states, the property must be used “exclusively” for religious purposes to qualify for exemption.
- b. Illinois interprets “exclusively” to mean “primarily” used for religious purposes. Incidental secular use does not defeat the exemption if the dominant use is religious.
- c. Wisconsin also requires “exclusive use,” but courts apply a proportionality test, allowing partial exemptions based on the ratio of exempt to total use.
- d. Illinois requires that the property not be used “with a view to profit” (35 ILCS 200/15-40(a)). Wisconsin does not use this phrase but similarly denies exemption for property not actively used for exempt purposes.
- e. Both states require ownership by the religious organization, though Illinois allows some flexibility for religious use without ownership in limited contexts (e.g., storefront churches), while Wisconsin requires both ownership and use by the religious association.

Effect of Leasing Exempt Property

- a. In Illinois, leasing does not automatically destroy exemption. If the primary use remains religious and not for profit, the exemption may continue. However, leasing for commercial purposes or with a view to profit will result in loss of exemption for the leased portion.
- b. Illinois courts have upheld exemptions where property was leased to another exempt organization for exempt purposes, especially when structured as space-sharing agreements rather than commercial leases.
- c. Wisconsin allows leasing without loss of exemption if the lessee uses the property for exempt purposes and the property remains actively used by the religious organization.
- d. In both states, documentation of the use and purpose of the lease is critical. Courts will examine the actual use, not just the terms of the lease.

Tax Implications

Unrelated Business Income Tax



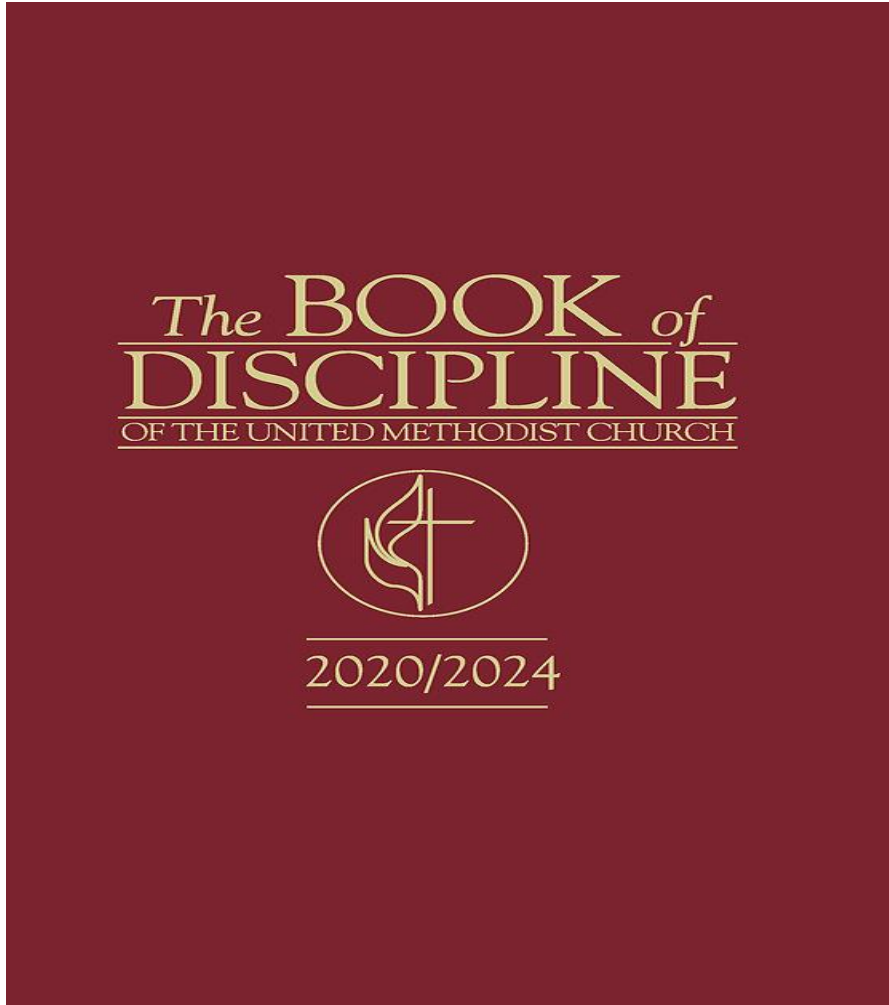
UBIT Considerations (Unrelated Business Income Tax)

- a. UBIT is a federal income tax imposed on income from a trade or business that is not substantially related to the organization's exempt purpose, even if the income is used for exempt purposes.
- b. Rental income from real property is generally excluded from UBIT under IRC § 512(b)(3), unless:
 - i. The property is debt-financed (IRC § 514).
 - ii. Substantial services are provided to the lessee.
 - iii. The lease includes personal property or is to a controlled entity (IRC § 512(b)(13)).
- c. Religious organizations leasing property should:
 - i. Avoid providing services beyond basic maintenance.
 - ii. Avoid leasing debt-financed property unless an exception applies.
 - iii. Ensure leases are not structured to benefit a related for-profit entity.

Case Law: Leasing by Religious and Charitable Organizations

- a. *Childrens Development Center, Inc. v. Olson*, 52 Ill. 2d 332 (1972):
 - i. A convent was leased to a nonprofit providing educational services for children with disabilities.
 - ii. The Illinois Supreme Court upheld the exemption, finding that the primary use remained aligned with exempt purposes and was not for profit.
- b. *Village of Oak Park v. Rosewell*, 115 Ill. App. 3d 497 (1st Dist. 1983):
 - i. A church leased its parking lot to the village for weekday municipal use.
 - ii. The court denied the exemption, holding that the lease was made with a view to profit, which disqualified the property.
- c. *Franciscan Communities, Inc. v. Hamer*, 2012 IL App (2d) 110431:
 - i. A religious organization operated a senior housing facility.
 - ii. The court denied exemption for most of the property, finding that the primary use was commercial in nature, despite the religious affiliation.
- d. *Victory Christian Church v. Department of Revenue*, 264 Ill. App. 3d 919 (1st Dist. 1994):
 - i. A storefront church sought exemption for leased space.
 - ii. The court acknowledged that exemption may be available even without ownership, but emphasized that no rent could be charged with a view to profit.

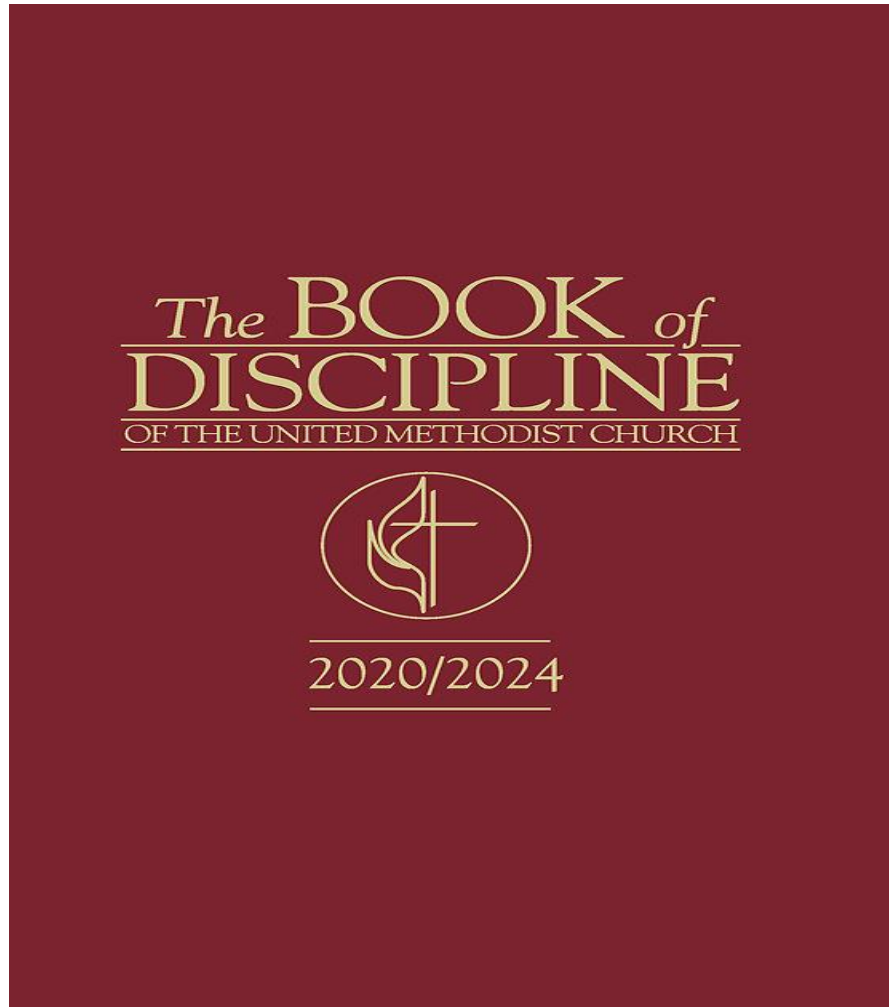
Relevant Section of The Book of Discipline



Closed Churches

- §2548 – Procedures
- §2549 – Leasing of Property

Relevant Section of The Book of Discipline



Operating Churches

- §2515 – Church Property --Approvals
- §2524 – District Property – Approvals
- §2540 – Unincorporated Church
- §2541 – Incorporated Church

Liability Implications

Insurance

Facility Usage Agreements

Indemnification

QUESTIONS?

Thank You!



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