

**PT 14-01**

**Tax Type: Property Tax**

**Tax Issue: Religious Ownership/Use**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS**

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**FAITH UNITED MB CHURCH,**

**APPLICANT**

v.

**THE DEPARTMENT OF REVENUE  
OF THE STATE OF ILLINOIS**

**No. 12-PT-0037 (11-16-330)**

**Real Estate Tax Exemption  
For 2011 Tax Year  
P.I.N. 25-22-119-023-0000**

**Cook County Parcel**

**Kenneth J. Galvin  
Administrative Law Judge**

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**RECOMMENDATION FOR DISPOSITION**

**APPEARANCES:** Rev. Ruth Ballard, *pro se*, on behalf of Faith United MB Church, Ms. Paula Hunter, Special Assistant Attorney General, on behalf of The Department of Revenue of the State of Illinois.

**SYNOPSIS:**

This proceeding raises the issue of whether the subject property, identified by Cook County Parcel Index Number 25-22-119-023-0000 (hereinafter the “subject property”) qualifies for exemption from 2011 real estate taxes under 35 ILCS 200/15-125, which exempts parking areas, not leased or used for profit, and owned by a religious institution.

The controversy arises as follows: On January 26, 2012, Faith United MB Church (hereinafter “Faith United” or “applicant”) filed a Real Estate Exemption Complaint for the subject property with the Board of Review of Cook County (hereinafter the “Board”). The Board

reviewed the applicant's complaint and subsequently recommended to the Illinois Department of Revenue (hereinafter the "Department") that the exemption be denied.

On July 26, 2012, the Department accepted the Board's recommendation and denied the exemption. Dept. Ex. No. 1. On September 25, 2012, Faith United filed a request for a hearing as to the denial and presented evidence at a formal hearing on June 6, 2013 with testimony from Ruth Ballard, Reverend, Sister Annie Ballard, Church Clerk, and Mr. Darryl Perry, Custodian. Following submission of all evidence and a careful review of the record, it is recommended that the parking lot not be exempt from property taxes for the 2011 assessment year.

**FINDINGS OF FACT:**

1. Dept. Ex. No. 1 establishes the Department's jurisdiction over this matter and its position that Cook County P.I.N. 25-22-119-023-0000 was not in exempt use during the 2011 assessment year. The Certificate of Denial states that the Department has made "repeated requests" for additional information as to "the exact date use began as a parking lot," "pictures showing the property in use," and "if the property is in the progress of becoming a parking lot, please provide a detailed list of all steps taken toward construction during 2011. Be specific and list dates. Submit copies of dated signed contracts with contractors, building permits, copies of dated paid invoices, etc., as documentation of the chronology of the process." Tr. pp. 5-6; Dept. Ex. No. 1.
2. Faith United purchased the subject property by "Quitclaim Deed-vacant land" from the City of Chicago on January 20, 2011 for \$3,000. Faith United is next door to the subject property. Tr. p. 18; App. Ex. No. 1.

**CONCLUSIONS OF LAW:**

An examination of the record establishes that the applicant has not demonstrated, by the presentation of testimony, exhibits and argument, evidence sufficient to warrant exempting Cook County P.I.N. 25-22-119-023-0000 from property taxes for the 2011 assessment year. In support thereof, I make the following conclusions.

Article IX, Section 6 of the Illinois Constitution of 1970 limits the General Assembly's power to exempt property from taxation as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The General Assembly may not broaden or enlarge the tax exemptions permitted by the constitution or grant exemptions other than those authorized by the constitution. Board of Certified Safety Professionals v. Johnson, 112 Ill. 2d 542 (1986). Furthermore, Article IX, Section 6 does not, in and of itself, grant any exemptions. Rather, it merely authorizes the General Assembly to confer tax exemptions within the limits imposed by the constitution. Locust Grove Cemetery v. Rose, 16 Ill. 2d 132 (1959). Thus, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App. 3d 497 (1<sup>st</sup> Dist. 1983).

In accordance with its constitutional authority, the General Assembly enacted section 15-40 of the Property Tax Code which exempts “[a]ll property used exclusively for religious purposes...” and section 15-125, which exempts parking areas, owned by a religious institution, not leased or used for profit, and used as a part of a use for which an exemption is provided in the Property Tax Code. 35 ILCS 200/15-40 and 35 ILCS 200/15-125, respectively. At the

evidentiary hearing, Faith United proved that it purchased the subject property by “Quitclaim Deed-vacant land” from the City of Chicago on January 20, 2011 for \$3,000. App. Ex. No. 1. Accordingly, the only remaining issue is whether the parking lot was in exempt use during 2011.

Applicant’s actual use determines whether the property in question is used for an exempt purpose. “Intention to use is not the equivalent of use.” Skil Corp v. Korzen, 32 Ill. 2d 249, 252 (1965). However, exemptions have been allowed where property is in the actual process of development and adaptation for exempt use. Illinois Institute of Technology v. Skinner, 49 Ill. 2d 59 (1971); People ex rel. Pearsall v. Catholic Bishop, 311 Ill. 11 (1924). Adapting and developing a property for an eventual exempt use can be sufficient to satisfy the actual use requirement. Weslin Properties v. Department of Revenue, 157 Ill. App. 3d 580 (2nd Dist. 1987).

The Department’s Certificate of Denial, issued July 26, 2012, states that the Department has made “repeated requests” for additional information as to “the exact date use began as a parking lot,” “pictures showing the property in use,” and “if the property is in the progress of becoming a parking lot, please provide a detailed list of all steps taken toward construction during 2011. Be specific and list dates. Submit copies of dated signed contracts with contractors, building permits, copies of dated paid invoices, etc., as documentation of the chronology of the process.” Dept. Ex. No. 1. None of the requested information was offered into evidence by the applicant at the hearing. No pictures showing use of the subject property as a parking lot, contracts, building permits, invoices, or documentation of the chronology of the development and adaptation process in 2011 was offered into evidence. No evidence was offered showing that Faith United has the funds to construct a parking lot on the property or that Faith United has commenced fundraising for this purpose.

The determinative factor for ascertaining conformity with the statutory exempt use requirement is actual, and not intended, use of the property in 2011. Skil Corporation v. Korzen, 32 Ill. 2d 249 (1965). There was considerable testimony about the misfortunes that Faith United has faced in the last few years but this testimony does not show that Faith United went beyond the “intention” to build a parking lot and actually took steps toward development and adaption of the subject property for exempt use. There was testimony that a tree root was removed from the property. But the testimony was conflicting as to whether the root was removed in 2011, the year at issue in this proceeding, or 2012. Tr. p. 9. Mr. Perry testified that he kept the lot clean and removed whatever people dumped on the property, “to keep its standing with the neighborhood and community.” Tr. p. 20. At most, these activities reflect a “mere intention to convert the property for an exempt use.” Weslin Properties, *supra*, at 586. However, intention to use is not the equivalent of use. Skil Corp. v. Korzen, 32 Ill. 2d 249, 252 (1965). Based on the testimony and evidence admitted, I am unable to conclude that the subject property was in the process of actual development and adaptation for exempt use in tax year 2011.

WHEREFORE, for the reasons stated above, it is recommended that the Department’s determination which denied the exemption from 2011 real estate taxes on the grounds that the subject property was not in exempt use should be affirmed and Cook County Parcel identified by P.I.N. 25-22-119-023-0000 should not be

January 23, 2014

Kenneth J. Galvin  
Administrative Law Judge