

PT 14-03

Tax Type: Property Tax

Tax Issue: Parking Lot Exemption

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

UNITED FOR BETTER LIVING,

APPLICANT

v.

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

No. 12-PT-0049 (11-16-688)

**Real Estate Tax Exemption
For 2011 Tax Year
P.I.N. 16-10-330-007-0000**

Cook County Parcel

**Kenneth J. Galvin
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Mr. Kelvin Bulger, KCB & Associates, on behalf of United For Better Living; Mr. John Alshuler, Special Assistant Attorney General, on behalf of The Department of Revenue of the State of Illinois.

SYNOPSIS:

This proceeding raises the issue of whether Cook County Parcel Index Number 16-10-330-007-0000 (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, when used as part of a use for which an exemption is provided in the Property Tax Code, and owned by a religious or charitable institution which meets the qualifications for exemption.

The controversy arises as follows: On June 20, 2012, United For Better Living (hereinafter “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 October 12, 2012, the Department accepted the Board’s recommendation and denied the exemption, finding that the property was not in exempt ownership or exempt use. Dept. Ex. No. 1. On December 6, 2012, United filed a request for a hearing as to the denial and presented evidence at a formal hearing on November 14, 2013 with testimony from David Whittley, President of the Board of Directors of United and Pastor of Corinthian Temple Church of God and Christ (hereinafter “Corinthian”). 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. 16-10-330-007-0000 was not in exempt ownership or use during the 2011 assessment year. Tr. pp. 9-10; Dept. Ex. No. 1.
2. Corinthian is located at 4520 West Washington Boulevard in Chicago. The subject parking lot is located at 4533 West Washington Boulevard. Tr. pp. 7, 11, 16.
3. United was formerly known as “Allison United Foundation for Better Living.” United was incorporated on May 14, 2009 and provides community services and

social services to residents in the Garfield Park area. United is located at 4540 West Washington Boulevard in Chicago across the street from the subject parking lot. Tr. pp. 12-16; App. Ex. No. 2.

4. The 2009 Cook County Tax Bill for P.I.N. 16-10-330-007-0000 was sent to “Allison Foundation or Current Owner” located at 4540 West Washington Boulevard. Tr. pp. 17-18; App. Ex. No. 3.

CONCLUSIONS OF LAW:

An examination of the record establishes that United has not demonstrated, by the presentation of testimony, exhibits and argument, evidence sufficient to warrant exempting Cook County P.I.N. 16-10-330-007-0000 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 (1st Dist. 1983).

In accordance with its constitutional authority, the General Assembly enacted section 15-125 of the Property Tax Code, which exempts parking areas, not leased or used for profit, when used as part of a use for which an exemption is provided in the Code, and owned by a religious or charitable institution which meets the qualifications for exemption. 35 ILCS 200/15-125. An applicant seeking a property tax exemption for its parking area must show three factors: (1) ownership of the parking area by an exempt institution; (2) that the parking area is not leased or used for profit, and; (3) that the parking area is used as part of a use for which exemption is provided by statute. Mount Calvary Baptist Church, Inc. v. Zehnder, 302 Ill. App. 3d 661 (1st Dist. 1998). In the instant case, United is unable to show that the parking lot is owned by an exempt institution.

Pastor Whittley testified that Corinthian and United have an oral agreement that Corinthian can use the subject parking lot for parking purposes. Tr. p. 18. The lot is also used by kids playing basketball “and to run around outdoor community activities.” According to Pastor Whittley, “there is no usage of the property for profit reasons.” Tr. p. 19.

The applicant in this case, United, is unable to prove that it owns the subject parking lot. United caused to be admitted into evidence a “Trustee’s Deed,” dated April 5, 1995 transferring PIN 16-10-330-007-0000 from Cosmopolitan Bank and Trust to “Jackson, Inc.” c/o “Ken Katschka.” App. Ex. No. 5. Pastor Whittley testified that he

had no knowledge of the Trustee's Deed and did not prepare it. "We have no knowledge of this transaction ... how this came to be." According to Pastor Whittle, it is possible that the deed was "fraudulent." Tr. pp. 24-25. He testified that he does not know "Ken Katschka." Tr. p. 30.

The 2009 Cook County Tax Bill for the subject property, P.I.N. 16-10-330-007-0000, was sent to "Allison Foundation or Current Owner" located at 4540 West Washington Boulevard. Tr. pp. 17-18; App. Ex. No. 3. Pastor Whittle testified that he has not received a tax bill subsequent to the 2009 bill. He testified as follows: "Well, we were under the assumption that the property possibly was ... sold for taxes." "We got a notice stating that the property would be sold." "However, we have not done a recent search." "As it stands now, we don't know the current status of the property." Tr. pp. 32-34. Pastor Whittle has not received property tax bills for 2010 or 2011. Tr. pp. 35-36. The exemption sought in the instant case is for 2011.

Pastor Whittle argued that he would not have paid the 2009 tax bill if he did not believe he owned the property. "... [W]e do know that we did pay tax bills because we owned the property." Tr. pp. 33-34. According to Pastor Whittle, United would not have paid the taxes if they believed that someone else owned the property. Tr. p. 24. The fact that the 2009 tax bill was sent to "Allison Foundation or Current Owner," and then paid by Pastor Whittle, is not sufficient for me to determine ownership of the subject property in the year 2011. Payment of a tax bill does not necessarily indicate ownership of the property.

In summary, I am unable to conclude from the testimony and the documentary evidence that the subject property is owned by a religious or charitable institution, as is

required by 35 ILCS 200/15-125. The Department denied the exemption on October 12, 2012 because, *intra alia*, “the property is not in exempt ownership.” Dept. Ex. No. 1. This denial made it incumbent upon the applicant to prove ownership of the property.

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 ownership or use should be affirmed and Cook County Parcel, identified by P.I.N. 16-10-330-007-0000, should not be exempt from property taxes in 2011.

June 19, 2014

Kenneth J. Galvin
Administrative Law Judge