

**ST 11-01**

**Tax Type: Sales Tax**

**Issue: Exemption From Tax (Charitable or Other Exempt Types)**

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

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

v.

**ABC Corporation N.F.P.,  
Applicant.**

) Docket No. 00-ST-0000  
)  
) Sales Tax Exemption  
)  
)  
) Julie-April Montgomery  
) Administrative Law Judge

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**RECOMMENDATION FOR DISPOSITION**

**Appearances:** Jane Doe *pro se* for ABC Corporation N.F.P.; Paula M. Hunter, Special Assistant Attorney General, for the Illinois Department of Revenue.

**Synopsis:**

The Illinois Department of Revenue (“Department”) twice denied ABC Corporation N.F.P.’s (“Applicant”) request for an exemption so that it could purchase tangible personal property at retail free from imposition of retailers’ occupation tax. Applicant protested the Department’s Second Denial of Sales Tax Exemption and requested a hearing in the matter.

At issue was whether Applicant qualified for the charitable exemption stated in section 2-5(11) of the Retailers’ Occupation Tax Act (“ROTA” -- 35 ILCS 120/2-5(11)). September 20, 2010 Order. Applicant submitted documentary and testimonial evidence. The Department presented documentary evidence. Following the submission of all evidence and a review of the record, it is recommended that the denial be affirmed. In

support thereof are made the following findings of fact and conclusions of law.

**Findings of Fact:**

1. The Department's case, inclusive of all jurisdictional elements, was established by the admission into evidence of the Department's Second Denial of Sales Tax Exemption letter dated October 16, 2007. Department Ex. No. 1; Tr. p. 7.
2. The Internal Revenue Service ("IRS") classifies Applicant as a section 501(c)(3) entity. Taxpayer Ex. Nos. 2 (February 31, 2004 IRS letter), 3 (February 19, 2007 IRS letter); Tr. pp. 10-12, 15.
3. Applicant provides transitional residences for no more than 10 males in a licensed recovery home. Taxpayer Ex. Nos. 4 (State of Illinois Department of Human Services' Certification as a recovery home), 5 (Chicago Zoning Board of Appeals' approval of Applicant's application for a transactional residence), 6 (list of Applicant's services); Tr. pp. 11-13.
4. Applicant provides various social services, such as counseling, mentoring, recovery coaching, health services/referrals, education referrals and placements, and employment referrals and placements. Taxpayer Ex. No. 6; Tr. p. 12.
5. Applicant received operating funds of \$147,000 in 2009 from fee-for-service contracts with various government agencies like the Department of Alcohol and Substance Abuse and Department of Corrections. Tr. pp. 15-18.
6. Applicant received no donations in 2009. Tr. p. 16.
7. Applicant held no fund raisers in 2009. Tr. p. 18.

### **Conclusions of Law:**

Examination of the record establishes that Applicant has failed to demonstrate, by the presentation of testimony, exhibits or argument, evidence sufficient to warrant exemption from sales tax. Accordingly, the determination by the Department which denied Applicant's sales tax exemption should be affirmed. In support of this conclusion are made the following conclusions.

The ROTA (35 ILCS 120/1 *et seq.*) imposes tax upon persons engaged in sales of tangible personal property at retail. 35 ILCS 120/2. Section 2-5 of this Act provides a list of sales that are exempt from tax, and includes the following: “[p]ersonal property sold to...a corporation, society, association, foundation, or institution organized and operated exclusively for charitable...purposes.” 35 ILCS 120/2-5(11).

It is well established in Illinois that there is a presumption against exemption and therefore, “exemptions are to be strictly construed” with any doubts concerning the applicability of an exemption “resolved in favor of taxation.” Van’s Material Co. Inc. v. Department of Revenue, 131 Ill. 2d 196 (1989). The Department’s denial of a request for an exemption is presumed to be correct, and Applicant has the burden of clearly and conclusively proving that it is entitled to the exemption. Wyndemere Retirement Community v. Department of Revenue, 274 Ill. App. 3d 455, 459-60 (2<sup>nd</sup> Dist. 1995). To prove its case, Applicant must present more than testimony which denies the Department’s determination. Applicant must present sufficient documentary evidence to support its exemption request. Sprague v. Johnson, 195 Ill. App. 3d 798 (4<sup>th</sup> Dist. 1990). In fact, Applicant bears the burden of proving by “clear and convincing” evidence the exemption applies. Evangelical Hospitals Corp. v. Department of Revenue, 223 Ill. App. 3d 225 (2<sup>nd</sup> Dist. 1991).

Although it was a case that involved a property tax exemption, Illinois courts have used the guidelines set forth in Methodist Old Peoples Home v. Korzen, 39 Ill. 2d 149 (1968) to determine whether an entity qualifies as exempt from ROTA. Wyndemere Retirement Community, *supra* at 459-460. These guidelines are that the entity: 1) benefit an indefinite number of people for their general welfare or in some way reduces the burdens of government; 2) has no capital, capital stock, or shareholders, and does not profit from the enterprise; 3) earns no profit or dividends, but rather derives its funds mainly from private and public charity, and holds them in trust for the objects and purposes expressed in the organization's charter; 4) does not provide gain or profit in a private sense to any person connected with it; 5) dispenses charity to all who need and apply for it; 6) places no obstacles in the way of those seeking the benefits; and 7) its primary purpose is charitable. Korzen, *supra* at 156-157.

An “exclusively” charitable purpose need not be interpreted as the entity’s sole purpose but rather interpreted to mean the primary purpose, and not a purpose that is incidental or secondary. Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430 (1<sup>st</sup> Dist. 1987).

At hearing, the Department introduced a copy of its Second Denial of Sales Tax Exemption of Applicant’s application under the certificate of the Director of Revenue. Department Ex. No. 1; Tr. p. 7.

While Applicant did proffer documentation, Applicant did not present its charter, by-laws or any other documents respecting its organization and operation. Moreover, Applicant proffered no financial records. Furthermore, Applicant presented no schedules

that reflected when, where and how it carried out its services. Thus, Applicant has not met the second and fourth Korzen guidelines.

Applicant failed to offer documents or even testimony as to whether it earned profits or made dividends. Applicant did however admit that its funding in 2009 was provided through fee-for-service contracts from various government agencies, and as such, no funds were derived from private and public sources of charity. Tr. pp. 15-18. Hence, it is clear that the third Korzen guideline was not met.

Applicant testified that so long as a bed was available, such bed was open to a male, age 17 and above, “as long as [he was] trying to change [his] lifestyle.” Tr. p. 13. Taxpayer Ex. No. 5. Applicant also admitted that all of its services were provided pursuant to fee-for-service contracts from government agencies. Such testimony favors a finding that Applicant could only help a limited number of individuals. In addition, Applicant’s admission that government fee-for-service contracts were its sole source of funding made clear Applicant could not have relieved government’s burden because government was paying for the services Applicant rendered. Again, another Korzen guideline, number one, cannot be said to have been met.

As previously stated, the record reflects that Applicant could only house ten men at a time and as such it was unclear whether Applicant dispensed its other services, like assistance with social security benefits, legal assistance, education and employment referrals and placements, to individuals who applied but were not residents of the house. Tr. p. 13; Taxpayer Ex. Nos. 5-6. It is also unclear whether a lack of house residency was a barrier to receipt of Applicant’s services. Hence, there exists a doubt as to whether services were dispersed to all who applied and obstacles placed before those seeking

Applicant's services. Consistent with Illinois law this doubt must be resolved in favor of taxation and as such the fifth and sixth Korzen guidelines cannot be said to have been met.

As previously stated, Applicant did not present its articles of incorporation, charter or by-laws so as to support the claim that Applicant's primary purposes were charitable. Applicant did present documents that reflected that the IRS classified Applicant as a charitable not-for-profit entity under IRS Section 501(c) (3). Taxpayer Ex. Nos. 2-3. Tr. pp. 10-12, 15. But it has been held that "a federal income tax exemption does not provide material facts about exclusive charitable use of property required by...the Illinois Constitution." Eden Retirement Center, Inc. v. Department of Revenue, 213 Ill. 2d 265, 291 (2004). Applicant also proffered documentation that it was registered with the Illinois Attorney General under the Charitable Trust and The Solicitation for Charity Act. Taxpayer Ex. No. 1 (July 28, 2003 Attorney General letter assigning Applicant a registration number); Tr. pp. 9-10. Here too, the Attorney General's document cannot be said to have provided material facts about Applicant's charitable use of the property. Again there is a fact for which there is doubt. In light of this doubt, resolution of Applicant's claim that its primary purpose was to provide charitable services must be resolved against Applicant and in favor of taxation. Thus, the seventh Korzen guideline cannot be deemed met.

It should also be noted that Eden, *supra*, at 287, found application of the Korzen guidelines determinative of whether there was exclusive use of property for charitable purposes. The court in Eden affirmed the administrative law judge's conclusion that because only one of the Korzen guidelines was met, no use for primarily charitable

purposes existed. *Id.* at 294. Inasmuch as Applicant failed to meet any of the Korzen guidelines, it cannot be said that its primary purpose was charitable.

To reiterate, it was Applicant's burden to introduce evidence sufficient to show that it was organized and actually operated as an exclusively charitable organization. Chicago Patrolmen's Assoc. v. Department of Revenue, 171 Ill. 2d 263, 271 (1996) ("The burden of proving the right to exemption rests upon the party seeking it."). Applicant failed to meet any of the guidelines espoused in Korzen, *supra*, and as such, Applicant did not present clear and convincing evidence that it was organized and operated for charitable purposes.

**Conclusion:**

In light of the above, it is recommended that the Department's denial of ABC Corporation's application for exemption be finalized.

Date: January 19, 2011

Julie-April Montgomery  
Administrative Law Judge