

ST 10-08

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**

THE DEPARTMENT OF REVENUE) Docket No.
OF THE STATE OF ILLINOIS)
) Sales Tax Exemption
v.)
)
ABC ORGANIZATION,) Julie-April Montgomery
Applicant.) <u>Administrative Law Judge</u>

RECOMMENDATION FOR DISPOSITION

Appearances: Paula M. Hunter, Special Assistant Attorney General, for the Illinois Department of Revenue; Jane Doe, for ABC Organization/Ministries.

Synopsis:

The Illinois Department of Revenue (“Department”) twice denied ABC Organization’s (“Applicant”) request for an exemption so that it could purchase tangible personal property at retail free from the imposition of retailers’ occupation tax. Applicant protested these denials contending it is organized and operated exclusively for charitable and religious purposes and requested a hearing in the matter.

At issue is whether Applicant qualifies for the charitable and/or religious exemptions stated in section 2-5 (11) of the Retailers’ Occupation Tax Act (35 ILCS 120/2-5 (“Act”)). November 2, 2009 Order. An evidentiary hearing was held at which Applicant presented 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 denials be affirmed. In support thereof the following

findings of fact and conclusions of law are made.

Findings of Fact:

1. The Department's case, inclusive of all jurisdictional elements, is established by the admission into evidence of the Department's March 6, 2009 letter initialing denying Applicant an exemption and the Department's second denial of exemption dated March 30, 2009. Department Ex. No. 1; Tr. p. 10.
2. On April 7, 2009 the Constitution of Bylaws of ABC Ministries ("Ministries") was adopted. Taxpayer Exhibit No. 1 (Constitution of Bylaws of ABC Ministries).

Conclusions of Law:

The Act imposes a tax upon persons engaged in the business of selling tangible personal property at retail. 35 ILCS 120/2. Section 2-5 (11) of the Act provides a list of those to whom the sale of tangible personal property is exempt from tax, and includes: "[p]ersonal property purchased by a...corporation, society, association, foundation, or institution organized and operated exclusively for...charitable [or] religious...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 the 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 (2nd 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 (4th Dist. 1990).

The Department denied Applicant's requests for exemption based upon a determination that Applicant was not organized and operated for exclusively charitable purposes. Department Ex. No. 1. Applicant's response was that it mistakenly characterized itself as an organization that one might misinterpret to be a charity but Applicant was really a ministry. Tr. pp. 5-6.

Applicant presented no evidence, documentary or testimonial, to demonstrate that it was engaged in charitable activities. To the contrary, it was stated that there was an interest in doing some charitable work in the future. Tr. p. 6. It is therefore clear no basis exists upon which to grant a charitable exemption.

Applicant argues it is and has been a ministry entitled to the religious exemption. Tr. pp. 6-8. Applicant further asserts that it should have initially referred to itself as a ministry and as such used the word ministry in its name as opposed to the word organization. Tr. pp. 5-7. Applicant also alleges the basis for use of the term organization in its name was twofold. First, because Ms. Doe came "from Jane Doe Ministries...[and there] was another emphasis that [Doe] wanted to put into the Ministry." Tr. p. 5. This other emphasis would be to later have a women's shelter and do some charity work. Tr. p. 6. The second reason for usage of the term organization was the advice of others that to do so would assist with "donations and whatever." *Id.* Thus, Applicant alleges it subsequently underwent a name change to clarify that it was in fact a ministry entitled to the religious exemption. Tr. pp. 5-7.

In support of its position that there was a name change, Applicant presented the Constitution of Bylaws of Ministries (Taxpayer Ex. No. 1); a letter from the Illinois Secretary of State that acknowledged receipt of articles of amendment for Ministries (Taxpayer Ex. No. 2); and a bulletin of worship services for October 20, 2009 for Ministries. Taxpayer Ex. No. 3.

No constitution or bylaws was presented on behalf of Applicant. In addition, Applicant presented no evidence that it had been dissolved or was no longer an active entity in the state of Illinois. Thus, the record reveals no evidence to indicate Applicant was no longer a viable entity. In addition, the record provides no evidence that Applicant changed its name.

Applicant asserts that it re-filed with the Illinois Secretary of State to be called a ministry as opposed to an organization. Tr. p. 7. However, the articles of amendment stated to have been received were not included with the Illinois Secretary of State's acknowledgement letter. Hence, this evidence also fails to support Applicant's assertion of a name change.

The bulletin presented at hearing was admitted to be made in preparation for the current litigation. Tr. pp. 14-16. It was also alleged that other bulletins existed but they could not be presented because Ms. Doe "didn't get a chance to bring...the other brochures." Tr. p. 16. This singular bulletin provides no evidence of the name change Applicant alleges it underwent after the Department's two denials for exemption. This evidence also fails to substantiate a name change.

Applicant presented no evidence, documentary or testimonial, that it was either organized or operated exclusively for religious purposes. Rather, all of Applicant's

documentation relates to Ministries. However, it is Applicant who was denied exemption and is the subject of the current proceedings. A review of the record does not demonstrate that Applicant either had become Ministries or that Applicant and the Ministries are one in the same entity.

Even if one accepts Applicant's assertions that it is Ministries and underwent a name change on April 7, 2009 to clarify and clearly indicate Applicant was a ministry, the religious exemption would not be warranted.

Illinois case law defines "religion" by stating "in its broadest sense, includes all forms and phases of belief in the existence of superior beings capable of exercising power over the human race, yet in the common understanding and its application to the people of this State it means the formal recognition of God as members of societies and associations." People ex rel. McCullough v. Deutsche Evangelist Lutherische Jehovah Gemeinde Ungeaenderter Augsburgischer Confession, 249 Ill. 132, 136 (1911).

Illinois law provides that two inquiries should be made when one seeks entitlement to a religious tax exemption. First, does the religious entity assert that its purposes (i.e. organization) and activities (i.e. operations) are religious. Second, is such assertion *bona fide*. Calvary Baptist Church v. Department of Revenue, 349 Ill. App. 3d 325, 331 (4th Dist. 2004).

Applicant provided no evidence that it was organized for religious purposes. Applicant provided no financial records evidencing its activities/operations. In addition, no evidence was proffered to show Applicant was a religious society of members. There exists no evidence to make a determination as to whether Applicant's assertion to have

religious purposes and operations is *bona fide*. Hence, Applicant is not entitled to the religious exemption.

The Constitution of Bylaws of Ministries documents its purpose as the glorification of God through worship, ministry, evangelism and discipleship. Taxpayer Ex. No. 1. The evidence of Ministries' activities/operations, however, was scant. A single bulletin of Ministries, prepared in anticipation of these legal proceedings was presented. The record indicated that additional bulletins were not proffered because there no was "chance to bring...other brochures." Tr. p. 16. The presentation of Ministries' bulletins from the April 7, 2009 filing with the Illinois Secretary of State would have evidenced Ministries to be a viable entity with ongoing activities/operations as opposed to an entity that hosted a single event.

Evidence was offered that Ministries was organized for religious purposes, but insufficient evidence was presented with regard to Ministries' operations. Only the one bulletin was posited to demonstrate Ministries' operations. The absence of additional bulletins is significant because it was asserted that additional bulletins existed but they were not presented at hearing. There was also a lack of financial records evidencing the financial operations of Ministries. In addition, Ministries' Constitution of Bylaws identified the duties of corporate officers, directors/trustees and a pastor (Taxpayer Ex. No. 1, Art. VII) but no indication was made as to who these individuals were and if they performed the tasks assigned to them. Lastly, the Constitution of Bylaws stated the pastor would act as the President and moderator of Ministries (*id.*) but no evidence was presented that identified who was Ministries' pastor or that such a person exercised the

duties enumerated in the Constitution of Bylaws. Ministries' evidence as to whether its operations are exclusively operated for religious purposes is not *bona fide*.

It is Applicant's burden to introduce evidence sufficient to show entitlement to the religious exemption. 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."). The statute requires Applicant be exclusively organized for the stated exempt purpose, in this case, religion. The statute also requires Applicant demonstrate that exclusively religious operations were conducted.

There is an absence of books and records and insufficient evidence of the operations to warrant granting the religious exemption.

Conclusion:

It is recommended the Department's denials for exemption be finalized.

Date: April 30, 2010

Julie-April Montgomery
Administrative Law Judge