

ST 12-17

Tax Type: Sales Tax

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
OF THE STATE OF ILLINOIS,

v.

ANYWHERE FOUNDATION,
TAXPAYER

Docket No: XXXXX
Sales Tax Exemption

Kenneth J. Galvin
Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Mr. John Doe, *pro se*, on behalf of Anywhere Foundation; Mr. John Alshuler, Special Assistant Attorney General, on behalf of the Department of Revenue of the State of Illinois.

SYNOPSIS: The Anywhere Foundation (hereinafter “Anywhere Foundation”) requested that the Illinois Department of Revenue (hereinafter the “Department”) issue the organization an exemption identification number so that it could purchase tangible personal property free from the imposition of use tax as set forth in 35 ILCS 105/1 *et seq.* On August 9, 2011, the Department issued a “Second Denial of Sales Tax Exemption” to Anywhere Foundation. On October 25, 2011, Anywhere Foundation protested the Department’s decision and requested a hearing, which was held on July 24, 2012, by telephone at Anywhere Foundation’s request, with testimony from Mr. John Doe, Chief Executive Officer. The sole issue to be determined at the hearing was whether Anywhere Foundation qualified for an exemption identification number as a corporation, society, association, foundation or institution organized and operated exclusively for religious

purposes. 35 ILCS 105/3-5(4). Following a careful review of the evidence and testimony presented at the hearing, I recommend that the Department's second denial be affirmed.

FINDINGS OF FACT:

1. The Department's case, inclusive of all jurisdictional elements, is established by the admission into evidence of the Department's second denial of exemption dated August 9, 2011. Tr. p. 4; Dept. Ex. No. 1.
2. Anywhere Foundation is exempt from federal income taxes under Section 501(c)(3) of the Internal Revenue Code. Tr. p. 7; App. Ex. No. 1.
3. Anywhere Foundation's "Financial Report" for December 31, 2008 states that Anywhere Foundation "is dedicated to promoting Bible memorization among children and youth, thereby encouraging them to genuine spiritual growth and preparing them to be effective ambassadors for Jesus Christ to the next generation." Anywhere Foundation "exists to provide Bible-based programs, resources and teaching tools that may be used by the Holy Spirit to build godly character in children and youth." App. Ex. No. 5.
4. Anywhere Foundation was established through an initial grant in the amount of \$10 million to fund the operations of The Anywhere Bible Bee. "The Anywhere Bible Bee is designed to help parents encourage diligence in Bible education through Bible study, Scripture memorization and prayer in their families." This is done through local "Bible Bee" contests which cover Bible knowledge and Bible memory and are held in churches, schools, universities and community centers across the United States. Children and youth, 7 to 18 years of age, are eligible to compete in one of three age divisions. The Anywhere Bible Bee Contest is held at the culmination of the local contests.

The foundation awards scholarships as its primary reward for achievement at these contests. Tr. pp. 7-8; App. Ex. Nos. 2 and 3.

5. The first year in which contest events occurred was 2009. There were 348 local Bible Bees held on September 12, 2009. “Several thousand competitors exposed their learning of the Bible in the form of both memorized Bible verses and knowledge of Bible facts.” “There were both written and oral tests that were part of the contest.” The Anywhere Bible Bee Contest was held on November 5 and 6, 2009, in Washington D.C. “Three hundred competitors qualified to participate as a result of their score from the local Bible Bee Contests.” One hundred competitors were drawn from each of the three age groups. “At the end of the Anywhere contest, prizes in the form of cash and/or scholarship money were awarded to the top three contestants in each age group.” App. Ex. No. 5.
6. Many denominations of the Christian faith are represented in the contests. Participants in the Bible Bees are not required to believe in Jesus Christ but they cannot “contest any answers or any materials that are provided as study materials.” Tr. pp. 17-18.
7. The registration fee to enter the contest is \$30 per child. A family pays only for the first five children to enter. If a family is unable to participate “due to lack of financial resources,” they can apply for a scholarship, by filling out an application and describing the circumstances of their financial hardship. The scholarship application states that “scholarship funds are limited.” Tr. pp. 9-10; App. Ex. No. 4.
8. The operating budget for the 2010 contest, held at the Anywhere Hotel, was \$2.5 million. Tr. pp. 13, 16; App. Ex. No. 6.

9. Anywhere Foundation's "Income Statement" for the seven months ended July 31, 2012 shows "Total Revenues" of \$926,769, of which \$640,053 was "Foundation Grants" and \$187,347 was "Enrollment Fees-Contestants." "Cost of Sales" was \$4,903, resulting in a "Gross Profit" of \$921,866. "Total Expenses" were \$612,517 resulting in a "Net Income" of \$309,349. Expenses include \$165,783 for Salaries/Wages and \$53,854 for Officers' and Directors' Salaries. App. Ex. No. 5.

CONCLUSIONS OF LAW:

An examination of the record establishes that Anywhere Foundation has not demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant an exemption from use tax. In support thereof, I make the following conclusions.

The applicant seeks to qualify for an exemption identification number as a corporation, society, association, foundation or institution organized and operated exclusively for religious purposes. 35 ILCS 105/3-5(4); 35 ILCS 120/2-5(11). The applicant bears the burden of proving "by clear and convincing" evidence that the exemption applies. Evangelical Hospitals Corp. v. Department of Revenue, 223 Ill. App. 3d 225 (2d Dist.1991). Moreover, it is well established that there is a presumption against exemption and that therefore, "exemptions are to be strictly construed" with any doubts concerning the applicability of the exemptions "resolved in favor of taxation." Van's Material Co. Inc. v. Department of Revenue, 131 Ill. 2d 196 (1989).

Guidelines for determining whether an entity is tax-exempt in property tax cases are also applicable to use tax cases. Friends of Israel Defense Forces v. Department of

Revenue, 315 Ill. App. 3d 298 (1st Dist. 2000). The Property Tax Code states that property used exclusively for “religious purposes” qualifies for exemption “as long as it is not used with a view to profit.” 35 ILCS 200/15-40.

The “religious purposes” contemplated by the Property Tax Code involve the use of property “as a stated place for public worship, Sunday schools, and religious instruction.” People ex rel. McCullough v. Deutsche Evangelisch Lutherisch Jehova Gemeinde Ungeanderter Augsburgischer Confession, 249 Ill. 132, 136-137 (1911) (hereinafter McCullough). In Provena Covenant Medical Center v. Department of Revenue, 384 Ill. App. 3d 734, 767 (4th Dist. 2008), aff’d, 236 Ill. 2d 368 (2010), where Provena Covenant was seeking a religious property tax exemption for Provena Hospital, the Court noted that if “public worship, Sunday schools and religious instruction” are illustrative of the nature of religious use, “it must follow that ‘religious use’ has a determinable nature and that to be a religious use, the activity must somehow resemble the activities listed in McCullough.”

I am unable to conclude that Anywhere Foundation’s local and Anywhere contests resemble the activities in McCullough. The Anywhere Bible Bee is designed to help parents encourage diligence in Bible education through Bible study, Scripture memorization and prayer in their families. App. Ex. No. 2. While at first glance, it appears that the Bible Bee involves “religious instruction,” this instruction takes place in a private home, under the encouragement and supervision of parents. Anywhere Foundation sells the religious materials to parents which allows the parents to encourage diligence in Bible education through Bible study and Scripture memorization and prayer in their families. Anywhere Foundation is asking for the use tax exemption, not the

parents, and there is no evidence in the record that Anywhere Foundation provides any religious instruction to the children.

In an undated letter sent by Anywhere Foundation to the Department, Anywhere Foundation's "Accountant/Business Manager" states that the Anywhere Bible Bee will be held at the Anywhere Hotel and Convention Center. "[We] will be incurring sales tax for various goods and services including hotel sales tax." App. Ex. No. 6. It appears from this letter that Anywhere Foundation is requesting the use tax exemption primarily for its contests, not for its sales of religious materials. My research indicates no reported cases in Illinois in which a local or Anywhere contest fell within the purview of the illustrative definition of "religious purpose" set forth by the Illinois Supreme Court in McCullough. The totality of the testimony in this case is contained in 20 pages of transcript. It is simply not enough for me to conclude that a contest that tests religious instruction and memorization sufficiently resembles actual "religious instruction" such that the contest merits a use tax exemption.

Moreover, Anywhere Foundation has not met its burden to show that the sales of educational materials and the contests are not used with a view toward profit. Anywhere Foundation's Income Statement for the seven months ending July 31, 2012 shows a "Net Income" of \$309,349, which is a 33% return on "Total Revenues" of \$926,769. But the profit from the contestant enrollment fees and sales of educational materials to contestants is even higher. Anywhere Foundation's "Net Revenue" excluding donations, gifts-in-kind and foundation grants is \$251,223. This revenue can be attributed to the sale of educational materials and the contestant enrollment fees. Anywhere Foundation's "Cost of Sales," consisting of sales of educational materials, is \$4,903. The "Gross Profit" from the sales of educational materials and enrollment fees is \$246,320.

There was testimony that the registration fee to enter the contest is \$30 per child, with a family having to pay only for the first five children. If a family is unable to participate “due to lack of financial resources,” they can apply for a scholarship, by filling out an application and describing the circumstances of their financial hardship. The scholarship application states that “scholarship funds are limited.” Tr. pp. 9-10; App. Ex. No. 4. There is no testimony in the record as to how much money, if any, was awarded in scholarships since the contests began. In Inter-Varsity Christian Fellowship v. Hoffman, 62 Ill. App. 3d 798, 803 (2d Dist. 1978), Inter-Varsity prepared religious publications. The court granted Inter-Varsity a religious property tax exemption noting that Inter-Varsity’s publications are sold at cost or less and that Inter-Varsity “provides a substantial amount of materials free or below cost to groups which are targeted for its message.” The record in the instant case does not allow me to draw these same conclusions, *i.e.*, that Anywhere Foundation’s sales of educational materials are made at cost or less or that Anywhere Foundation allows a “substantial amount” of participants to receive materials and enter the contests for free.

Based on the testimony and evidence admitted at the hearing, I recommend that the Department’s determination denying the applicant a sales tax identification number be affirmed, and that Anywhere Foundation not be granted a sales tax identification number.

ENTER:

Kenneth J. Galvin
Administrative Law Judge

November 26, 2012