

ST 13-03

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.

ABC BUSINESS,

TAXPAYER

No: XXXXX

Sales Tax Exemption Number

**Kenneth J. Galvin
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Mr. Edwin Korb, The Korb Law Group, on behalf of ABC Business; Mr. John Alshuler, Special Assistant Attorney General, on behalf of the Department of Revenue of the State of Illinois.

SYNOPSIS: On July 15, 2011, the Illinois Department of Revenue (hereinafter the “Department”) denied the second request of ABC Business (hereinafter “ABC Business”) that the Department issue it 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 November 18, 2011, ABC Business protested the Department’s decision and requested a hearing, which was held on September 14, 2012, with Ms. Jane Doe, Founder and Executive Director, testifying. The sole issue to be determined at the hearing was whether ABC Business qualified for an exemption identification number as “a corporation, society, association, foundation or institution organized and operated exclusively for charitable ... purposes.” 35 ILCS 105/3-5(4). Following a careful review

of the evidence and testimony presented at the hearing, I recommend that ABC Business be granted an exemption identification number.

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 July 15, 2011. Tr. pp. 9-10; Dept. Ex. No. 1.
2. ABC Business was founded in May of 2008. Jane Doe's son has autism spectrum disorder. She produced a documentary film entitled "Refrigerator Mothers," about mothers of children with autism. The film introduced Jane Doe to the situation encountered by individuals with disabilities after they finish high school and the State stops providing for them. She founded ABC Business to help people with disabilities build the skills that they need to be integrated into the community and to have access to employment. ABC Business teaches people with disabilities to build their office and administrative skills, and Internet and technology skills, using computers in ABC Business office. Tr. pp. 13-14, 24-25.
3. The purpose of ABC Business, according to its Bylaws, "is to establish and operate an on-line network for and by adults with disabilities and those who assist them to serve communications needs, assist with community integration, promote interdependent living and educate the public about disability." App. Ex. No. 1.
4. ABC Business is exempt from federal income taxes under Section 501(c)(3) of the Internal Revenue Code. Tr. p. 11; App. Ex. No. 1.

5. ABC Business does not have capital stock or shareholders and does not pay dividends. App. Ex. No. 1.
6. ABC Business has helped over 150 teenagers and adults, ranging in age from 14 to 35, who have participated in their programs. ABC Business has provided a curriculum, free of charge, to teachers in 10 schools and their special education students to help the students build Internet safety and life skills, necessary for employment. ABC Business is planning to expand the curriculum to other schools in the State of Illinois with special education departments. Tr. pp. 18-20; App. Ex. No. 3.
7. ABC Business teaches individuals with disabilities how to educate businesses, organizations and corporations to raise their disability-awareness and increase their comfort in interacting with customers and co-workers with disabilities. ABC Business has trained employees at Business 1, Business 2 and Business 3. App. Ex. No. 3.
8. ABC Business shares space in Anycity with another not-for-profit, "Center For Independent Futures," which works with disabled individuals to find alternatives to group home and institutional living. ABC BUSINESS's rent is \$400/month. Tr. pp. 20, 24.
9. ABC Business receives all of its funding from donations, fundraisers and small grants. ABC Business has volunteers, but no employees. No salaries are paid. ABC Business has an independent contractor, paid \$25/hour for 10 to 15 hours/week, who creates marketing materials and assists with e-mail newsletters and communications and provides support and supervision to individuals with disabilities who are present in the office to learn computer skills. Another

- independent contractor, a young adult with a disability, works 8 hours/week for minimum wage. Jane Doe does not take a salary. Tr. pp. 21-23; App. Ex. No. 3.
10. ABC Business “Illinois Charitable Organization Annual Report,” filed August 10, 2010 shows “public support, contributions and program service revenue,” of \$9,334. ABC Business receives grants from corporate foundations, private donors and family foundations. ABC Business received a grant from Somewhere Township. ABC Business receives no State funding or state grants. Tr. pp. 25-27, 33; App. Ex. No. 2.
11. No person has been charged a fee for any of ABC Business services. No person requesting services from ABC Business has been turned away. Tr. pp. 27-28; App. Ex. No. 3.

CONCLUSIONS OF LAW:

ABC Business seeks to qualify for an exemption identification number as a “corporation, society, association, foundation or institution organized and operated exclusively for charitable...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 exemption “resolved in favor of taxation.” Van’s Material Co. Inc. v. Department of Revenue, 131 Ill. 2d 196 (1989). An examination of the record establishes that ABC Business has demonstrated, by the presentation of testimony and through exhibits and argument, evidence sufficient to warrant an exemption from sales tax.

In Methodist Old People's Home v. Korzen, 39 Ill. 2d 149 (1968), the Illinois Supreme Court outlined several factors to be considered in assessing whether an organization is actually an institution of public charity: (1) the benefits derived are for an indefinite number of persons [for their general welfare or in some way reducing the burdens on government]; (2) the organization has no capital, capital stock or shareholders; (3) funds are derived mainly from private and public charity, and the funds are held in trust for the objects and purposes expressed in the charter; (4) the charity is dispensed to all who need and apply for it, and does not provide gain or profit in a private sense to any person connected with it; (5) the organization does not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses.

The above factors are guidelines for assessing whether an institution is a charity, but are not definitive requirements. DuPage County Board of Review v. Joint Comm'n on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461 (2d Dist. 1995). Thus, a rigid formula is not to be applied to all fact situations but instead "courts consider and balance the guidelines by examining the facts of each case and focusing on whether and how the institution serves the public interest and lessens the State's burden." *Id.* at 469.

Applying the above guidelines, I conclude that ABC Business meets the criteria for qualifying as a charitable organization. ABC Business was founded in May of 2008. Jane Doe's son has autism spectrum disorder. She produced a documentary film entitled "Refrigerator Mothers," about mothers of children with autism. The film introduced Jane Doe to the situation encountered by individuals with disabilities after they finish high school and the State stops providing for them. Jane Doe testified that students with disabilities in Illinois can receive a public school education through their 21st birthday.

Individuals over age 21 only receive emergency-based support from the State. Many people who seek ABC Business services have gone through school and are now out on their own. Tr. pp. 28, 32.

Jane Doe founded ABC Business to help people with disabilities build the skills that they need to be integrated into the community and to have access to employment. ABC Business teaches and trains people with disabilities to build their office and administrative skills, and Internet and technology skills, using computers in ABC Business office. Tr. pp. 13-14, 24-25. The purpose of ABC Business, according to its Bylaws, “is to establish and operate an on-line network for and by adults with disabilities and those who assist them to serve communications needs, assist with community integration, promote interdependent living and educate the public about disability.” App. Ex. No. 1.

According to the testimony, students with disabilities have typically been blocked from access to the Internet by teachers and parents because of their perceived vulnerability. ABC Business offers Internet safety and productivity life skills training for students in their offices. In addition, ABC Business has provided a curriculum free of charge to teachers and their special education students in 10 schools in the State of Illinois. The curriculum is designed to help students build Internet safety and life skills, required for employment. ABC Business is planning to expand the curriculum to other schools in the State of Illinois. Tr. pp. 18-20; App. Ex. No. 3.

ABC Business also teaches individuals with disabilities how to educate businesses, organizations and corporations to raise their disability-awareness and increase their comfort in interacting with customers and co-workers with disabilities. ABC Business has trained employees at Business 1, Business 2 and Business 3. App. Ex. No.

3. “John,” who has autism spectrum disorder, is in ABC Business “Disability Awareness Players,” a group of individuals who visit organizations to educate them on how to interact productively and confidently with a customer or a potential co-worker who has a disability. John was the lead speaker when ABC Business trained the front-end staff of Savannah Theater on interacting with people with disabilities. John works part-time at XYZ Business. Tr. pp. 16-18.

“Robert,” who has a developmental disability, has been volunteering at ABC Business for 3½ years. ABC Business taught him how to interact with local businesses, visit a store manager, share information about disability awareness and help businesses interact with a person with autism. He subsequently secured employment at Business 1 at the prepared foods counter. He continues to volunteer at ABC Business doing mailings, making phone calls, mentoring and helping with fundraising. Tr. pp. 15-16.

ABC Business is exempt from federal income taxes under Section 501(c)(3) of the Internal Revenue Code. Tr. p. 11; App. Ex. No. 1. ABC Business does not have capital stock or shareholders and does not pay dividends. App. Ex. No. 1. ABC Business receives all of its funding from donations, fundraisers and small grants. Tr. pp. 21-23. ABC Business “Illinois Charitable Organization Annual Report,” filed on August 10, 2010, shows “public support, contributions and program service revenue,” of \$9,334. ABC Business receives grants from corporate foundations, private donors and family foundations. ABC Business received a grant from Somewhere Township. ABC Business receives no State funding or state grants. Tr. pp. 25-27, 33; App. Ex. No. 2. I conclude that ABC Business does not have capital stock or shareholders, does not earn a profit or pay dividends, and derives its funds mainly from public and private charity, holding such funds for the charitable purposes as listed in its Bylaws and as discussed above.

ABC Business has volunteers, but no employees. No salaries are paid. ABC Business has an independent contractor, paid \$25/hour for 10 to 15 hours/week, who creates marketing materials and assists with e-mail newsletters and communications and provides support and supervision to individuals with disabilities who are in the office to learn computer skills. Another independent contractor, a young adult with a disability, works 8 hours/week for minimum wage. Jane Doe does not take a salary. Tr. pp. 21-23; App. Ex. No. 3. I conclude that ABC Business does not provide gain or profit in a private sense to any person connected with it.

ABC Business has helped over 150 teenagers and adults, ranging in age from 14 to 35, who have participated in their programs. Jane Doe testified that no person has been charged a fee for any of ABC Business services. No person requesting services from ABC Business has been turned away. Tr. pp. 27-28; App. Ex. No. 3. I conclude that ABC Business dispenses charity to all who need and provide for it and does not place obstacles in the way of those who need its benefits.

One of the most important factors in determining if an organization is a charity is that the benefits provided serve the public interest or in some way reduce the burden of government. Counsel for ABC Business argued that educating people with disabilities to build their office and administrative skills, and Internet and technology skills helps them build confidence, learn appropriate behavior in the office and better interact with people. This, in turn, helps people with disabilities secure gainful employment and become taxpayers and relieves the State of providing emergency based support to them after age 21. Tr. p. 38. I conclude that ABC Business serves the public interest and reduces a burden on government.

For the foregoing reasons, it is recommended that ABC Business be granted an exemption identification number.

Kenneth J. Galvin
Administrative Law Judge

February 26, 2013