

ST 13-21

Tax Type: Sales Tax

Tax Issue: Exemption From Tax (Charitable Or Other Exempt Types)

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

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

v.

ABC BUSINESS

Taxpayer

Docket # XXXX

Claim for Exemption Number

RECOMMENDATION FOR DISPOSITION

Appearances: Robin Gill, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Jane Doe, *pro se*, for ABC Business

Synopsis:

ABC Business (“taxpayer”) sent an application to the Department of Revenue (“Department”) for an exemption identification number in order to purchase tangible personal property at retail free from the imposition of retailers’ occupation and use taxes. The Department denied the application, and the taxpayer protested the denial. An evidentiary hearing was held during which the issue presented was whether the taxpayer is organized and operated exclusively for charitable purposes under section 3-5(4) of the Use Tax Act (35 ILCS 105/3-5(4)) and section 2-5(11) of the Retailers’ Occupation Tax Act (35 ILCS 120/2-5(11)). After reviewing the record, it is recommended that the taxpayer is organized and operated exclusively for charitable purposes and is entitled to an exemption number.

FINDINGS OF FACT:

1. The taxpayer is an Illinois not-for-profit corporation that was organized on September 17, 1999. (Dept. Ex. #1, p. 7)
2. The taxpayer operates a “no-kill animal sanctuary” on approximately 69 acres of land in Gridley, Illinois. The taxpayer takes animals that are abused, abandoned, or unwanted. (Taxpayer Ex. #1, p. 1; #2; Tr. p. 11)
3. The articles of incorporation include the taxpayer’s purposes as follows:

The purposes for which the Corporation are organized are purely and exclusively charitable, educational and for the prevention of cruelty to animals within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, and not for financial gain, being to obtain, receive, accept, hold, manage, administer, and invest such funds and assets as may from time to time be given to and accepted by the Corporation by any person or persons, or by any firm, foundation, association, partnership, organization, or entity, whether private or public, trust or corporation, for the purpose of providing and maintaining a safe and tranquil environment for domestic, farm and exotic animals, providing a natural habitat and sanctuary for wildlife, and providing education and information regarding the care and protection of such animals, and acting in a fiduciary capacity to carry out the foregoing purposes. (Taxpayer Ex. #3)

4. In addition to the purposes in the articles of incorporation, the bylaws specify the following purposes:
 - To provide a refuge and home for animals that would otherwise have been slaughtered.
 - To provide a safe environment for exotic animals that need protection from euthanasia and other risks to health and life.
 - To provide a natural sanctuary and environment for birds, deer, squirrels, and other wild animals native to the Midwest Region of the United States, which would include food and protection from the elements and humans.
 - To provide a safe haven for domestic animals such as dogs and cats who are in need of a home, including medical care, food and a caring environment.

- To provide a wetland environment to protect and preserve wildlife and flora.
 - To provide shelter, safety and medical care for animals at risk or in need.
 - To prevent and promote prevention of cruelty to animals.
 - To provide information and education regarding the care and protection of animals.
 - To act in a fiduciary capacity to carry out any of the above purposes. (Dept. Ex. #1, p. 12)
5. The taxpayer's property is open to the public 7 days a week from 9:30 a.m. to 5:00 p.m. The taxpayer's hours are flexible, and it is open additional hours through reservation. It is also open when other activities are scheduled on the property. (Taxpayer Ex. #1; Tr. pp. 9-10)
 6. At the time of the hearing, the taxpayer was providing food, shelter, and care for 57 farm and domestic animals. Its residents included a camel, cow, turkey, horses, donkeys, geese, sheep, goats, potbelly pigs, llamas, alpacas, dogs and cats. The animals stay there to live the remainder of their lives. (Taxpayer Ex. #1; Tr. pp. 11, 15)
 7. The taxpayer also maintains a wildlife habitat. It has native grasses, three wetland areas, a pond, and forestland. The sanctuary is surrounded by the Mackinaw River. The wildlife includes deer, raccoons, possums, turkeys, and pheasants. Guests may also bird watch on the property. (Taxpayer Ex. #1; Tr. p. 11)
 8. The taxpayer provides programs on things such as animal care (food, grooming, shearing, hoof trimming, etc.) to help prevent abuse. It also provides programs on the importance of spaying and neutering and on identifying wildlife in order to feed them and maintain their habitat. (Taxpayer Ex. #1; Tr. pp. 7, 25)

9. The taxpayer does not charge for any of its services. All of its income is from donations. (Dept. Ex. #1, p. 3; Tr. pp. 10, 14-17)
10. Guests may plan educational visits, and volunteer tour guides will take them through the sanctuary and allow them to interact with the animals, both domesticated and exotic. The guests can view the natural wildlife and the flora that inhabit the area. (Dept. Ex. #1, p. 35; Tr. pp. 22, 25)
11. Guests are also welcome to visit Rainbow Bridge, which is the section of the taxpayer's property that is dedicated to the burial and memory of animals and friends that have passed away. (Dept. Ex. #1, p. 35)
12. The guests include families, school groups, church groups, scouts, and nursing home residents. (Taxpayer Ex. #1; Tr. p. 7)
13. The taxpayer works with elderly and disabled people who have pets in their homes who cannot afford to maintain them. The taxpayer provides the food and medication for those pets without charge so that the person can keep the pet in his or her home. If the pet-owner needs to go to the hospital, the taxpayer will take care of his or her pet without charge. (Taxpayer Ex. #1; Tr. pp. 8, 14-15)
14. The taxpayer has worked with the local police department to assist with cases involving animal abuse and to care for the animals once they are rescued. (Taxpayer Ex. #1; Tr. pp. 8-9)
15. If the taxpayer is unable to keep an animal on its property, the taxpayer will transport the animal to another sanctuary in order to "save" it. (Tr. p. 9)

16. One of the taxpayer's volunteers organizes a "volunteer workday" once a month during the warmer months when volunteers will arrive on the property to help with general maintenance, animal care, and construction of habitats. (Tr. pp. 23-25)
17. For the fiscal year of September 1, 2011 to August 31, 2012, the taxpayer's unaudited statement of income and expenses shows that its income was \$70,016.34, which was entirely from donations. The taxpayer's expenses were \$75,725.96, which resulted in a net loss of \$5,709.62. The expenses do not include any salaries because everyone who works for the taxpayer is a volunteer. (Dept. Ex. #1, p. 3)
18. The taxpayer receives donations from individuals and businesses. Local groups have fundraisers for the taxpayer. Some businesses donate hay, straw, or feed. Several stores throughout Bloomington and Peoria have donation boxes for the taxpayer. (Taxpayer Ex. #2; Tr. p. 10)
19. The taxpayer does not have capital, capital stock, or shareholders. The taxpayer is exempt from federal income taxes under section 501(c)(3) of the Internal Revenue Code. (Dept. Ex. #1, pp. 7-11, 28-32)

CONCLUSIONS OF LAW:

The Use Tax Act ("Act") (35 ILCS 105/1 *et seq.*) imposes a tax upon the privilege of using in Illinois tangible personal property purchased at retail from a retailer. 35 ILCS 105/3. Section 3-5(4) of the Act provides a list of tangible personal property that is exempt from the tax, and includes the following:

Personal property purchased by a governmental body, by a corporation, society, association, foundation, or institution organized and operated exclusively for charitable, religious, or educational purposes On and after July 1, 1987, however, no entity otherwise eligible for this exemption shall make tax-free purchases unless it has an active exemption identification number issued by the Department. 35 ILCS 105/3-5(4).

Section 2-5(11) of the Retailers' Occupation Tax Act ("ROTA") (35 ILCS 120/1 *et seq.*) contains a similar provision. See 35 ILCS 120/2-5(11). Therefore, in order to receive the exemption identification number, the taxpayer must be "organized and operated" exclusively for charitable purposes. See also 86 Ill. Admin. Code §130.2005(j)(3). The term "exclusively" is not interpreted literally to mean the entity's sole purpose; it is construed to mean the primary purpose. Yale Club of Chicago v. Department of Revenue, 214 Ill. App. 3d 468, 473 (1st Dist. 1991); Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430, 436 (1st Dist. 1987).

In order to determine whether the taxpayer is organized and operated exclusively for charitable purposes, the following guidelines are considered: (1) whether the organization's gift benefits an indefinite number of people, persuading them to an educational or religious conviction, for their general welfare or in some way reducing the burdens of government; (2) whether the organization has no capital, capital stock or shareholders and earns no profits or dividends; (3) whether the organization's funds are derived mainly from public and private charity and are held in trust for the objects and purposes expressed in its charter; (4) whether charity is dispensed to all who need and apply for it and without obstacles of any character in the way of those who need and would avail themselves of the charitable benefits dispensed; (5) whether the organization does not provide gain or profit in a private sense to any person connected with it; and (6) whether the primary purpose for which the property is used and not any secondary or incidental purpose is charitable. Methodist Old Peoples Home v. Korzen, 39 Ill. 2d 139, 156-57 (1968); Wyndemere Retirement Community v. Department of Revenue, 274 Ill. App. 3d 455, 459 (2nd Dist. 1995). These factors are balanced with an overall focus on whether and how the organization serves the public interest and lessens the State's burden. Du

Page County Board of Review v. Joint Commission on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461, 466 (2nd Dist. 1995). Whether an institution has been organized and is operating exclusively for an exempt purpose is determined from its charter, bylaws and the actual facts relating to its method of operation. *Id.*

The taxpayer has the burden of proving by clear and convincing evidence that it is entitled to the exemption. Rogy's New Generation, Inc. v. Department of Revenue, 318 Ill. App. 3d 765, 771 (1st Dist. 2000); Wyndemere, *supra*; Gas Research Institute, *supra*. It is well-settled that tax exemption provisions are strictly construed in favor of taxation. *Id.*; Heller v. Fergus Ford, Inc., 59 Ill. 2d 576, 579 (1975). All facts are construed and all doubts are resolved in favor of taxation. *Id.* To prove its case, a taxpayer must present more than its testimony denying the Department's determination. Sprague v. Johnson, 195 Ill. App. 3d 798, 804 (4th Dist. 1990); Balla v. Department of Revenue, 96 Ill. App. 3d 293, 296 (1st Dist. 1981). The taxpayer must present sufficient documentary evidence to support its claim. *Id.*

The taxpayer has presented sufficient documentary evidence to show that it is organized and is operating exclusively for charitable purposes. The taxpayer benefits an indefinite number of people because the taxpayer's services and admission to the property are free. The taxpayer is open to anyone who wants to use it at virtually any time. The taxpayer has no capital, capital stock, or shareholders, and it earns no profits or dividends. All of the taxpayer's income is from donations. No one privately gains from the organization because the taxpayer has no employees; everyone who works there is a volunteer. The taxpayer provides free services to everyone, and no obstacles are placed in the way of those seeking the taxpayer's charitable benefits. The taxpayer lessens the burdens of government by assisting law enforcement personnel with rescues

of animals who have been abused. The primary use of the taxpayer's property is for charitable purposes, and the taxpayer is entitled to an exemption identification number.

Recommendation:

For the foregoing reasons, it is recommended that the taxpayer's request for an exemption identification number be granted.

Enter: October 10, 2013

Linda Olivero
Administrative Law Judge