

**ST 14-10**

**Tax Type: Sales Tax**

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

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

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

**v.**

**ABC FOUNDATION,  
Taxpayer**

**No: XXXX  
Sales Tax Exemption**

**Kenneth J. Galvin  
Administrative Law Judge**

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**RECOMMENDATION FOR DISPOSITION**

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

**SYNOPSIS:** On September 10, 2012, the Illinois Department of Revenue (hereinafter the “Department”) denied the second request of the ABC Foundation (hereinafter “Foundation”) 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 September 25, 2012, the Foundation protested the Department’s decision and requested a hearing, which was held on August 9, 2013, with Ms. Jane Doe, President and Executive Director, and Ms. May Green, Grant Writer and Consultant, testifying. The sole issue to be determined at the hearing was whether the Foundation 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 the Foundation 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 September 10, 2012. Tr. pp. 9-10; Dept. Ex. No. 1.
2. The Foundation was incorporated on April 11, 2011 under the Illinois "General Not For Profit Corporation Act." The Foundation is registered under the Illinois "Charitable Trust" and the "Solicitation for Charity Act." The Foundation is exempt from income tax under Section 501(c)(3) of the Internal Revenue Code. Tr. pp. 5, 11-12; App. Ex. Nos. 5, 6 and 7.
3. The Foundation's "core mission" is to provide affordable housing and services that meet the specialized needs of Illinois senior citizens, veterans and persons with disabilities. In May, 2012, the Foundation acquired eight properties from the National Community Stabilization Trust to be primarily used for housing for veterans with disabilities. The properties were in need of minor to major rehabilitation, primarily indoors, before becoming part of the housing stock in County 1, County 2, County 3 and County 4. The Foundation reserves multi-unit properties for congregate housing of unrelated family members. Each resident has their own bedroom but share the kitchen, common areas and two bathrooms. The Foundation also has single family homes. After two years of occupancy, the family may exercise a "buy option," through FHA or VA financing, for the cost of the rehabilitation of the home. The funds from the house

sales are then reinvested into the Foundation to cover program costs, other rehabbing costs, future acquisitions and operating costs. The Foundation works with the Alliance to End Homelessness, the Veteran's Administration and the Anywhere Alliance to End Homelessness. Tr. pp. 5-6, 14, 17; App. Ex. No. 11.

4. The Foundation provides housing for its clients on a permanent basis. Clients are not asked to leave unless there is a gross violation of either the house rules or the lease contract which cannot be mitigated. The Foundation has provided housing for 215 people. Tr. pp. 14, 21.
5. The National Community Stabilization Trust ("NCST") works with the FHA and banks in the disposal of foreclosed properties. NCST qualified the Foundation as a grantee of the properties at no cost. Tr. pp. 5-6.
6. One of the Foundation's properties is in Anyplace, Illinois, and this property houses veterans who were homeless. Another property in Nice Place, currently in the last stages of rehab, is being prepped to house a family of nine who are homeless. This property was scheduled for completion on August 14, 2013. The Foundation also has properties in North Anywhere, Pretty Place, Peaceful Place and Anywhere. Tr. pp. 6, 18-20.
7. A general contractor is engaged to do the Foundation's rehab work with funding coming from the Foundation's start-up funds and other donations. Tr. p. 7.
8. Veterans are referred to the Foundation from VASH, "Veteran's Administration Supportive Housing." Veterans who are honorably discharged and homeless qualify for a voucher in order to get housing and to cover their rent. The veterans must apply to the Foundation and detail their financial problems and provide information on medical

issues, mental illness and any substance abuse problems. The Foundation does not just put a veteran in the house; they make sure all their needs are adequately met through supportive social service agencies located near the housing, including case managers, assistance with credit and money management and job placement. Tr. pp. 9-10, 20, 22; App. Ex. Nos. 2 and 4.

9. The Foundation operates under a set of Bylaws adopted January 5, 2012. Tr. pp. 14-15; App. Ex. No. 8.

10. The initial money for rehabbing the properties, \$5,000, came from a loan from Ms. Jane Doe. The Foundation has also received some private donations. The Foundation sold one property in Anywhere and used these funds, \$22,000, to rehab other properties, including the one in Nice Place. The Foundation's Form 990, "Return of Organization Exempt from Income Tax" for 2012 shows "Total Revenue" of \$21,150 and "Expenses" of \$21,150. No salaries are paid by the Foundation. Tr. pp. 16-17, 20; App. Ex. No. 10.

11. Clients must pay a portion of their income to the Foundation as a housing fee. The rest of the monthly rent comes from a HUD VASH Voucher for subsidized living expenses and Section 8 funds from the State of Illinois. Tr. pp. 24-25; App. Ex. No. 1.

### **CONCLUSIONS OF LAW:**

The Foundation 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 the Foundation 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.

The Foundation was incorporated on April 11, 2011 under the Illinois “General Not For Profit Corporation Act” and is exempt from income tax under Section 501(c)(3) of the Internal Revenue Code. The Foundation is registered under the Illinois “Charitable Trust” and the “Solicitation for Charity Act.” Tr. pp. 5, 11-12; App. Ex. Nos. 5, 6 and 7.

Applying the Methodist Old People’s Home guidelines, I conclude that the Foundation has presented clear and convincing evidence that it is, in fact, a charitable organization. The Foundation’s “core mission” is to provide affordable housing and services that meet the specialized needs of Illinois senior citizens, veterans and persons with disabilities. In May, 2012, the Foundation acquired eight properties from the National Community Stabilization Trust principally for housing veterans who have disabilities. NCST is a national nonprofit organization working with the nation’s largest financial institutions and local housing providers across the U.S. to reclaim neighborhoods hard hit by high levels of foreclosure and abandonment. NCST connects servicers and investors holding foreclosed properties with local organizations. One of NCST’s goals is to provide a more efficient and cost effective mechanism for transferring foreclosed properties from servicers and investors to local groups, such as the Foundation, working to stabilize targeted communities. NCST qualified the Foundation as a grantee of foreclosed properties at no cost. Tr. pp. 5-6.

The acquired properties are in need of minor to major rehabilitation, primarily indoors, in order to become part of the housing stock in County 1, County 2, County 3 and County 4. The Foundation reserves multi-family units for congregate housing of unrelated family members. Each resident would have their own bedroom but share the kitchen, common areas and two bathrooms. The Foundation also has single family homes. After two years of occupancy, the family may exercise a “buy option,” with FHA or VA financing, for the cost of the rehabilitation

of the home. The funds from the home sales are reinvested into the Foundation to cover program costs, other rehabbing costs, future acquisitions and operating costs. The Foundation works with the County 1 Alliance to End Homelessness, the Veteran's Administration and the Anywhere Alliance to End Homelessness. Tr. pp. 5-6, 14, 17; App. Ex. No. 11. The Foundation's activities increase the supply of rental and affordable ownership housing for senior citizens, veterans and persons with disabilities, thereby supporting the stabilization of distressed neighborhoods. I conclude that the Foundation's activities serve the public interest and reduce a burden on government.

The Foundation does not have capital, capital stock or shareholders. No salaries are paid. Tr. pp. 16-17, 20; App. Ex. No. 10. I conclude that the Foundation does not provide gain or profit in a private sense to persons connected with it. The initial funds for rehabbing the properties, \$5,000, came from a loan from Ms. Jane Doe. The Foundation has also received some private donations. The Foundation sold one property in Anywhere and used these funds, \$22,000, to rehab other properties, including the one in Nice Place. The Foundation's Form 990, "Return of Organization Exempt from Income Tax" for 2012 shows "Total Revenue" of \$21,150 and "Expenses" of \$21,150. Tr. pp. 16-17, 20; App. Ex. No. 10. Ms. Jane Doe testified that fundraising has not officially begun "because we have put more emphasis on rehabbing these properties and getting the chronically homeless veteran families in there to be supported in their housing." Tr. p. 18. The Foundation plans to apply for grant money. Tr. p. 14. I conclude that the majority of the Foundation's funding comes from public and private charity. Since any funds earned from the sale of properties is used to rehab other properties and to cover costs, I conclude that the Foundation's funds are held for the charitable purposes described in its "core mission," discussed above.

Veterans are referred to the Foundation from VASH, “Veteran’s Administration Supportive Housing.” VASH is a joint effort between HUD and the VA to move veterans and their families out of homelessness and into permanent housing. HUD provides assistance through Section 8 which allows veterans to rent privately owned housing, such as the housing rehabbed by the Foundation. Veterans who are honorably discharged and homeless qualify for a voucher in order to secure housing and to cover their rent. VASH recommends qualifying veterans to the Foundation. The veterans must then apply to the Foundation and detail their financial problems and provide information on medical issues, mental illness and any substance abuse problems. The Foundation has provided housing to 215 chronically homeless people. Tr. p. 24. The Foundation accommodates veterans who need and apply for housing, subject to the availability of units.

The Foundation does not just put a veteran in the house; they make sure all their needs are adequately met through supportive social service agencies located near the housing, including case managers, assistance with credit and money management, job placement, substance abuse and mental illness problems. Tr. pp. 9-10, 20, 22; App. Ex. Nos. 2 and 4. Veterans must sign a contract acknowledging “House Rules.” The House Rules state that, on a weekly basis, all residents must demonstrate that they are following their case plan and making progress toward self-sufficiency. App. Ex. No. 3. As part of the progress toward self-sufficiency, clients must pay a portion of their income to the Foundation as a housing fee. The housing fee goes toward the supportive living arrangement. Ms. Jane Doe testified that the housing fee “does not cover everything.” Clients will still need groceries, food, transportation and moving expenses. “There’s many different supportive services that we provide for them on-site and off-

site.” Tr. pp. 24-25. I conclude that the Foundation does not place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses.

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

Kenneth J. Galvin  
Administrative Law Judge

May 5, 2014