

ST 14-27

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 FOUNDATION INC.
TAXPAYER

Docket No: XXXX
Sales Tax Exemption

Kenneth Galvin
Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Mr. Kevin Jack Black, Law Offices of Kevin Jack Black, on behalf of ABC Foundation, Inc.; Ms. Faith Dolgin and Ms. Jennifer Kieffer, Special Assistant Attorneys General, on behalf of the Department of Revenue of the State of Illinois.

SYNOPSIS: On January 3, 2013, the Illinois Department of Revenue (hereinafter the “Department”) denied the second request of ABC Foundation (hereinafter “ABC Foundation”) that the Department issue it an exemption identification number so that it could purchase tangible personal property at retail, free from the imposition of use tax as set forth in 35 ILCS 105/1 *et seq.* On July 10, 2013, ABC Foundation protested the Department’s decision and requested a hearing, which was held on May 5, 2014, with testimony from Mr. Jack Black, Treasurer, and Ms. Jane Doe, Parade Accountant. The sole issue to be determined at the hearing was whether ABC 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 Department’s second denial be affirmed.

FINDINGS OF FACT:

1. The Department’s *prima facie* case, inclusive of all jurisdictional elements, is established by the admission into evidence of the Department’s second denial of exemption dated January 3, 2013. Tr. pp. 9-10; Dept. Ex. No. 1.
2. The Merry Parade, in the Green area on the ABC Foundation of Anywhere, first started in 1979 after the Parade on 79th Street in Anywhere was moved to downtown Anywhere. The Parade in Green was discontinued in 2010 and 2011. Tr. pp. 13, 15.
3. After the Parade’s hiatus in 2010 and 2011, the costs of the Parade “skyrocketed.” The City of Anywhere now charges ABC Foundation for crowd control, cleanup, a stage and microphone. ABC Foundation pays for private security to augment the security provided by the Anywhere Police Department. Tr. pp. 20-21.
4. ABC Foundation’s Bylaws state that its purpose “shall be to conduct an annual Parade on March 17 of each year or the Sunday prior to March 17 on a yearly basis as well as to encourage Any heritage and history for all individuals who are interested in such an activity.” “The Mission of this organization shall be to serve the Green Park area as well as the people of the City of Anywhere by building permanent charitable capital and providing services, which shall contribute to the health and vitality of the community.” Tr. pp. 12, 17-18, 46-47, 77-78; Taxpayer’s Ex. No. 1.
5. Mr. Jack Black testified that ABC Foundation’s primary purpose is to put on the Parade. Tr. p. 71.
6. ABC Foundation is exempt from federal income taxes under Section 501(c)(3) of the Internal Revenue Code. Tr. pp. 14-15, 84; Taxpayer’s Ex. No. 1.

7. No directors, officers or employees are compensated by ABC Foundation. ABC Foundation has not issued any stock. There is a “core group” of between 25 and 30 people that are responsible for staging the Parade. Anyone with an interest in putting on the Parade can join this Committee. Board of Directors are appointed, rather than elected. Tr. pp. 13-14, 21, 67-69.
8. The Green Art Center (the “Center”) provides classes in art and music and other services for the community. In 2010 and 2011, when the Parade went on hiatus, ABC Foundation sponsored a family Merry fest in the Center’s parking lot. ABC Foundation erected a heated tent, sponsored face painting for children, Any dancing and Any music and had an Any soda bread contest. In 2010, ABC Foundation donated \$XXXX in proceeds from the family fest to the Center. In 2011, ABC Foundation donated \$XXXX. In 2014, ABC Foundation donated \$XXXX to the Center to assist with retiring their mortgage. The Center is a separate organization from ABC Foundation. Tr. pp. 16, 23-25, 48, 76-77; Taxpayer’s Ex. No. 2.
9. ABC Foundation’s decisions as to who to donate to are reached “informally on the phone” and a check is usually hand-delivered to the family. ABC Foundation has paid for funeral expenses, sent flowers to funeral homes and paid for after-funeral luncheons. ABC Foundation has made donations to schools in the area. Tr. pp. 27-28.
10. If ABC Foundation has money left over from fund-raising and after paying the expenses for the Parade, it is “saved for the following year to start next year’s Parade.” Tr. pp. 30-32, 42-43.
11. ABC Foundation’s Income Statement for September 30, 2012 shows “Total Receipts” of \$XXXX and “Total Disbursements” of \$XXXX leaving “Net Receipts” of \$XXXX. 90% of the Total Receipts is earned as follows: 7% is from entrance fees that are

charged organizations and families who march in the Parade; 28% is from “business sponsors,” bars and businesses in the ABC Foundation that donate because they make money from the Parade; 20% is from a raffle held on the day of the Parade where 1,000 tickets are sold at \$XXXX/each for prizes; 18% is from a fundraising party; 13% is from a golf fundraiser; 2% is from the sale of t-shirts and sweatshirts and 2% is from “band sponsors,” people or organizations that sponsor the 15 marching bands in the Parade. 81% of the Total Disbursements is incurred as follows: 55% is “parade expense,” including barricades, insurance and security; 20% is from expenses incurred from the golf outing, raffle and fundraising party; 4% is from ads in the Green Review thanking people who sponsored the Parade; 2% is from donations that ABC Foundation made to organizations and individuals in the community. Tr. pp. 30-42, 93-95; Taxpayer’s Ex. No. 2.

12. There are different levels of “business sponsors” for the Parade. Depending on how much a business donates, their name could appear in local newspapers or on banners at the golf outing. Businesses may also get free raffle tickets depending on their level of sponsorship. Tr. pp. 50-52.

13. ABC Foundation did not receive any charitable donations from individuals or companies in 2010 through 2012. In 2013, ABC Foundation received \$XXXX in charitable donations from individuals and companies. Tr. pp. 49-51; Taxpayer’s Ex. No. 2.

14. In 2012, ABC Foundation made donations of \$XXXX. \$XXXX (18%) went to Canny Florist for flowers, plants, or green and white shamrocks for funerals of families in “grief and bereavement.” \$XXX (5%) was donated to Fred Red who puts on “Any plays.” \$XXXX (12%) was donated to the “Any American Labor Council,” which

sponsors the downtown Anywhere Merry Parade. \$XXXX (6%) was donated to Judy Rudy, whose husband, a committee member of ABC Foundation, died. \$XXXX (10%) was donated to the Happy Conference, which helped ABC Foundation bring back the Parade after its hiatus. \$XXXX (18%) was donated to “BB,” “whose daughter is mentally disabled.” ABC Foundation has also made donations to families of firemen and policemen who have died. Tr. pp. 52-64, 73; Taxpayer’s Ex. No. 2.

15. The Board of Directors discusses potential donations over the telephone. There is no formal application process for donations. The “general public” does not know that they can receive donations from ABC Foundation. No advertisement that ABC Foundation donates funds is provided to the public. ABC Foundation “likes to do things” “under the radar.” ABC Foundation does not budget for donations. If ABC Foundation’s Parade disbursements were more than their Parade fundraising, they would not make any donations. Tr. pp. 64-67, 75, 79-80.

16. ABC Foundation appoints different charitable organizations as “grand marshals” for the Parade. This gives the organizations publicity and makes people aware of them. Grand marshals have included Partyers, an organization that pays hospital bills for needy children, Blue Hospital, and different Catholic schools in the neighborhood. ABC Foundation pays for the Parade float of the grand marshal. The Parade also has “honorees,” organizations which give back to the community. Holidays, a grocery store that donated \$XXXX to the Center, was recently honored. Tr. pp. 43-45, 69.

17. Families, businesses and organizations pay a fee to march in the Parade. Families pay \$XXXX and may carry a banner. Businesses pay \$XXXX. Applications to march are sent to a subcommittee. The subcommittee can waive the entry fee for voluntary

organizations, like the Boy Scouts. This waiver is not publicized because “if you did that, then you wouldn’t be raising any money.” Tr. pp. 69-71.

18. There is no cost to view the parade. Tr. p. 71.

CONCLUSIONS OF LAW:

An examination of the record establishes that ABC Foundation has not demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant an exemption from sales tax. Accordingly, under the reasoning given below, the determination by the Department denying ABC Foundation a sales tax exemption number should be affirmed. In support thereof, I make the following conclusions.

ABC 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). 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). In exemption cases, 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).

In Methodist Old People’s Home v. Korzen, 39 Ill. 2d 149 (1968), (hereinafter “Korzen”) 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; and (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 Merry Parade, in the Green area on the ABC Foundation of Anywhere, first started in 1979 after the Parade on 79th Street in Anywhere was moved to downtown Anywhere. The Parade in Green was discontinued in 2010 and 2011. Tr. pp. 13, 15. After the Parade’s hiatus in 2010 and 2011, the costs of the Parade “skyrocketed.” The City of Anywhere now charges ABC Foundation for crowd control, cleanup, a stage and microphone. ABC Foundation pays for private security to augment the security provided by the Anywhere Police Department. Tr. pp. 20-21. ABC Foundation is exempt from federal income taxes under Section 501(c)(3) of the Internal Revenue Code. Tr. pp. 14-15, 84; App. Ex. No. 1.

In determining whether an organization is exclusively charitable in its purpose, it is proper to consider provisions of its charter. Rotary International v. Paschen, 14 Ill. 2d 387 (1987). ABC Foundation’s Bylaws state that its purpose “shall be to conduct an annual Parade on March 17 of each year or the Sunday prior to March 17 on a yearly basis as well as to encourage Any heritage and history for all individuals who are interested in such an activity.” “The Mission of this organization shall be to serve the Green- Park area as well as the people of the City of

Anywhere by building permanent charitable capital and providing services, which shall contribute to the health and vitality of the community.” Tr. pp. 12, 17-18, 46-47, 77-78; Taxpayer’s Ex. No. 1. According to Mr. Jack Black’s testimony, the primary purpose of ABC Foundation is to put on the Merry Parade in Green. Tr. p. 71.

Putting on a Parade is not an endeavor recognized by Illinois courts as inherently “charitable.” Counsel for ABC Foundation has not referred me to, and my own research does not indicate, any case in Illinois where an organization whose main purpose was to stage a parade was found to be exclusively charitable. Moreover, I am unable to conclude that ABC Foundation lessens a burden on government, which according to Korzen, is a “distinctive characteristic” of a charitable organization. The fundamental ground upon which all exemptions in favor of charitable institutions are based is the benefit conferred upon the public by them and a consequent relief, to some extent, of the burdens upon the state to care for and advance the interests of its citizens. School of Domestic Arts and Sciences v. Carr, 322 Ill. 562 (1926). For example, public education is a governmental “burden” according to the Illinois Constitution because the State “has the primary responsibility for financing the system of public education.” Ill. Const., art. X, § 1. My research indicates that there is no government burden to put on parades and ABC Foundation is not relieving the State of Illinois or the City of Anywhere of a burden by staging the Merry Parade. There is no Illinois statute or Anywhere ordinance requiring Illinois or Anywhere to stage a Merry Parade. The City does stage a Merry Parade but I am unable to conclude that the City has a “burden” to do so.

35 ILCS 105/3-5(4) requires that an organization be operated “exclusively” for charitable purposes in order to qualify for a sales tax exemption. An “exclusively” charitable purpose need not be interpreted literally as the entity’s sole purpose; it should be interpreted to mean the primary purpose, but not a merely incidental or secondary purpose or effect. Gas

Research Institute v. Department of Revenue, 154 Ill. App. 3d 430, 436 (1st Dist. 1987). It is clear that ABC Foundation's primary purpose is to put on the Parade. According to the testimony, the largest expense of ABC Foundation is staging the Parade. Tr. p. 70. As discussed below, ABC Foundation may have provided some charity in past years. But the provision of this charity appears to be "secondary" and "incidental" to ABC Foundation's main purpose which is to put on the Merry Parade in Green. Mr. Jack Black testified that in a year when Parade disbursements are more than Parade fundraising, ABC Foundation would not make any donations. Tr. p. 67. Clearly then, charitable expenditures are secondary and incidental to staging the Parade.

No directors, officers or employees are compensated by ABC Foundation. ABC Foundation has not issued any stock. There is a "core group" of between 25 and 30 people that are responsible for staging the Parade. Anyone with an interest in putting on the Parade can join this Committee. Board of Directors are appointed, rather than elected. Tr. pp. 13-14, 21, 67-69. Based on the above, I conclude that ABC Foundation does not provide gain or profit in a private sense to any person connected to it.

But I am unable to determine that ABC Foundation possesses the other characteristics of a charitable organization, according to Korzen. ABC Foundation's Income Statement for September 30, 2012 shows "Total Receipts" of \$XXXX and "Total Disbursements" of \$XXXX leaving "Net Receipts" of \$XXXX. 90% of the Total Receipts is earned as follows: 7% is from entrance fees that are charged organizations and families who march in the Parade; 28% is from "business sponsors," bars and businesses in the ABC Foundation that donate because they make money from the Parade; 20% is from a raffle held on the day of the Parade where 1,000 tickets are sold at \$XXXX/each for prizes; 18% is from a fundraising party; 13% is from a golf fundraiser; 2% is from the sale of t-shirts and sweatshirts and 2% is from "band sponsors,"

people or organizations that sponsor the 15 marching bands in the Parade. Tr. pp. 30-42; Taxpayer's Ex. No. 2.

ABC Foundation did not receive any charitable donations from individuals or companies in 2010 through 2012. In 2013, ABC Foundation received \$XXXX in charitable donations from individuals and companies. Tr. pp. 49-51; Taxpayer's Ex. No. 2. Accordingly, I am unable to conclude that ABC Foundation receives the majority of its funding from public and private charity, another distinctive characteristic of a charitable organization according to Korzen. It is suggested that the reasoning behind this characteristic is that an "exclusively" charitable organization meets its needs by soliciting and receiving donations from individuals and others with charitable impulses. The "exclusively" charitable organization then holds the donations in trust and exercises its expertise and experience to apply the donations to an identifiable charitable need. With the exception of the \$XXXX in charitable donations received by ABC Foundation in 2013, ABC Foundation's revenue sources are intended for the staging of the Parade. People are contributing to ABC Foundation, not because ABC Foundation can apply the donations to an identifiable charitable need, but because they want to see the Merry Parade in Green.

Another of the Korzen characteristics is that the organization's funds be held in trust for the objects and purposes expressed in the charter. Mr. Jack Black testified that if ABC Foundation has money left over from fund-raising and after paying the expenses for the Parade, it is "saved for the following year to start next year's Parade." Tr. pp. 30-32, 42-43. ABC Foundation is holding its funds in trust for the purposes expressed in its charter but, as discussed above, these purposes are not charitable. "There is nothing in its [purposes] which requires plaintiff to devote its funds or income to purposes deemed charitable in law." Rotary International v. Paschen, 14 Ill. 2d 480, 488 (1958). ABC Foundation's excess funds go back

into funding next year's Parade but there is no evidence in the record that ABC Foundation uses excess funds to provide more charity.

The evidence in the record regarding ABC Foundation's charitable expenditures does not allow me to conclude that ABC Foundation's charity benefits an indefinite number of persons. In 2012, \$XXXX, or 2% of ABC Foundation's total disbursements of \$XXXX, were donations to individuals or groups. This small amount donated relative to ABC Foundation's total disbursements again illustrates the incidental nature of ABC Foundation's charity. \$XXXX (18%) of the \$XXX went to Canny Florist for flowers, plants, or green and white shamrocks for funerals of families in "grief and bereavement." Expenditures for flowers for funerals have not previously been recognized by Illinois courts as charitable. \$XXXX (5%) was donated to Fred Red who puts on "Any plays." I am unable to determine from the record that Fred Red is a "charity" or needs charity.

\$XXXX (12%) was donated to the "Any American Labor Council," which sponsors the downtown Anywhere Merry Parade. \$XXXX (10%) was donated to the Happy Conference, which helped ABC Foundation bring back the Parade after its hiatus. Sponsoring a parade and bringing back a parade are also not endeavors recognized by Illinois courts as charitable. \$XXXX (6%) was donated to Judy Rudy, whose husband, a committee member of ABC Foundation, died. \$XXXX (18%) was donated to "MM," "whose daughter is mentally disabled," according to the testimony. ABC Foundation has also made donations to families of firemen and policemen who have died. Tr. pp. 52-64, 73; Taxpayer's Ex. No. 2. There was testimony that ABC Foundation has donated to Leisure, the American Lung Association, "HELP" (an organization founded by firemen that pays for camp for children burned in fires), the Any American Heritage Center and the Any American Alliance. Tr. pp. 25-27. No documentary evidence was admitted to support these donations.

In addition to these donations, ABC Foundation made donations to the Green Art Center in 2010, 2011 and 2014. The Center provides classes in art and music and other services for the community. When the Parade went on hiatus, ABC Foundation sponsored a Merry family fest in the Center's parking lot. ABC Foundation erected a heated tent, sponsored face painting for children, Any dancing and Any music and had an Any soda bread contest. In 2010, ABC Foundation donated \$XXXX in proceeds from the family fest to the Center. In 2011, ABC Foundation donated \$XXXX. In 2014, ABC Foundation donated \$XXXX to the Center to assist with retiring their mortgage. The Center is a separate organization from ABC Foundation. Tr. pp. 16, 23-25, 48, 76-77; Taxpayer's Ex. No. 2.

“... [T]he Korzen factor that charity be dispensed ‘to all who need it’ is not limited to the past but also requires an assessment of future policy.” Wyndemere Retirement Comm. v. Dept. of Revenue, 274 Ill. App. 3d 455, 460 (2d Dist. 1995). While the donations to the Center were substantial, there is no indication from the record that this level of donation will continue now that the Parade is being staged again. Mr. Jack Black testified that ABC Foundation does not budget for donations. Tr. pp. 66-67. He also testified that in a year when Parade disbursements are more than Parade fundraising, ABC Foundation would not make any donations. Tr. p. 67. This testimony does not allow me to conclude that donations to the Center or other organizations and individuals will continue in the future. Whether ABC Foundation will provide a sustainable level of charity in the future is pure speculation. *Id.* at 458. The record of this case does not show that ABC Foundation's charitable expenditures have in the past or will in the future benefit an indefinite number of people.

Moreover, I am unable to conclude that ABC Foundation's charity is dispensed to all who need and apply for it or that ABC Foundation does not appear to place obstacles in the way of those who need its benefits. ABC Foundation's decisions as to who to donate to are extremely

informal. ABC Foundation has no formal application process for donations. ABC Foundation's Board of Directors discusses potential donations over the telephone. "A lot of these situations that come up are from word of mouth, or some parade committee [member] might say this is so and so in the neighborhood whose mother passed away, or father passed away. It's a simple criterion. There's nothing written down." Tr. pp. 64-67, 75. There is no evidence in the record as to what protocol is utilized by ABC Foundation, if any, in order to determine how one charitable organization or person in need of a donation might be selected over another. The Bylaws are silent on this issue. Taxpayer's Ex. No. 1. Whether Directors can direct funds to their favorite charities or their favorite individuals is unknown and this factor can justifiably be perceived as an "obstacle" to those who are truly in need of the charitable benefits that ABC Foundation dispenses.

Furthermore, the "general public" does not know that they can receive donations from ABC Foundation. No advertisement that ABC Foundation donates funds is provided to the public. Mr. Jack Black was asked "does the general public know that they have the potential to receive money from [ABC Foundation]?" He responded "No, not really, no." Tr. p. 66. Because the general public does not know of the availability of donations, I cannot conclude that ABC Foundation's charity is dispensed to all who need it. Those who need it would not know to apply for it. Mr. Jack Black testified that ABC Foundation "likes to do things" "under the radar." Tr. pp. 79-80. Doing things "under the radar" and not advertising that charity is available are obstacles in the way of those who need charity and would avail themselves of ABC Foundation's charity if they knew about it. A charity dispenses charity and does not obstruct the path to its charitable benefits. Eden Retirement Center v. Dept. of Revenue, 213 Ill. 273, 287 (2004). The testimony indicates that several of ABC Foundation's policies, while apparently well-intentioned, create an obstacle to receiving benefits from the organization. In balancing the

Korzen guidelines, I am unable to conclude that ABC Foundation is, in fact, a charitable organization.

For the above stated reasons, I recommend that the Department's determination denying ABC Foundation a sales tax identification number be affirmed

November 25, 2014

Kenneth J. Galvin
Administrative Law Judge