

ST 14-31

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**

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

BUSY COMMITTEE

APPLICANT

**No: XXXX
Sales Tax Exemption**

**Kenneth J. Galvin
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Ms. Jane Doe, *pro se*, on behalf of BUSY Committee; Mr. Daniel Edelstein, Special Assistant Attorney General, on behalf of the Department of Revenue of the State of Illinois.

SYNOPSIS: On July 18, 2012, the Department of Revenue of the State of Illinois (hereinafter the “Department”) issued a “Second Denial of Sales Tax Exemption” to BUSY Committee (hereinafter “BUSY”) denying its request that the Department issue it an exemption identification number so that it could purchase tangible personal property at retail free from the imposition of retailers’ occupation tax as set forth in 35 ILCS 105/1 *et seq.* On October 24, 2013, BUSY protested the Department’s decision and requested an administrative hearing which was held on June 9, 2014 with Ms. Jane Doe, Vice-President, Ms. Gertie Green, “Volunteer,” and Mr. John Doe, “Volunteer” and husband of Ms. Jane Doe, testifying.

The sole issue to be determined at the hearing was whether BUSY 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 case, inclusive of all jurisdictional elements, is established by the admission into evidence of the Department's second denial of exemption dated July 18, 2012. Dept. Ex. No. 1.
2. BUSY's "Mission Statement," included in its Bylaws, states that it is a not for profit organization of active, retired employees of ABC BUSINESS and volunteers who seek to find ways of offering financial scholarships to students. "We feel that it is essential to assist with sponsorship in the community for these youth as our future leaders." "We host fundraisers to secure funds by engaging past, present and future telephone workers and families in this effort." "We plan to hold a biennial event [to] raise funds to offer a minimum of 3 monetary scholarship awards to high school and college students who demonstrate leadership roles in their community amongst their peers and who ultimately will become viable productive citizens." Tr. pp. 22-23; Taxpayer's Ex. No. 4.
3. In 2013, BUSY received 5 applications for scholarships and awarded 4 scholarships. Three of the scholarships were for \$XXXX and one scholarship was for \$XXXX. One \$XXXX scholarship was awarded to "Andrea," the daughter of the President of BUSY. One \$XXXX scholarship was awarded to "Zoe," the daughter of John Doe. As of the date of the evidentiary hearing, no scholarships had been awarded for 2014. Tr. pp. 12-13, 18-19, 26-27, 31-32, 44-45.

4. The Bylaws state that scholarship awards must be distributed prior to 11:59 p.m. on July 31 of the end of the fiscal year. The Bylaws state further that “should NOT enough qualified applicants apply within 24 hours of the deadline of the application opening; immediate family members [of other committee members] can apply for the scholarships as long as all criteria are met.” Tr. pp. 17-18, 21; Taxpayer’s Ex. No. 4.
5. A March 30, 2014, United Church of Christ newsletter states as follows under Community Events: “ABC BUSINESS Reunion, BUSY Committee presents An Evening of Legends, a scholarship fundraising event, Saturday, April 26, 5:00 p.m., ...” Tr. pp. 13-14, 23-24; Taxpayer’s Ex. No. 1.
6. Two e-mails sent to the “Anywhere School for the Arts” dated March 1, 2013 and March 11, 2013 state as follows: “FINAL ATTENTION: Scholarship applications now being accepted deadline 3-31-13.” Tr. pp. 14-17; Taxpayer’s Ex. Nos. 2 and 3.

CONCLUSIONS OF LAW:

Section 2-5 of the Retailers’ Occupation Tax Act (“ROTA”) provides that gross receipts from the sale of tangible personal property sold to a corporation, society, association, foundation or institution organized exclusively for charitable purposes are exempt from tax imposed by the ROTA. 35 ILCS 120/2-5(11). Section 3-5 of the Use Tax Act (“UTA”) complements Section 2-5(11) of the ROTA and provides in pertinent part that use of the following tangible personal property is exempt from tax imposed by the UTA: Personal property purchased by a government body, by a corporation, society, association, foundation, or institution organized and operated exclusively for charitable purposes. 35 ILCS 105/3-5(4).

BUSY 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). As statutory provisions exempting property or entities from taxation, Section 2-5(11) of the ROTA and Section 3-5(4) of the UTA must be strictly construed against exemption 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). All debatable questions must be resolved in favor of taxation. People ex rel. Nordland v. The Assoc of the Winnebago Home for the Aged, 40 Ill. 2d 91 (1968).

An examination of the record establishes that BUSY has not demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant an exemption from sales tax as an association organized exclusively for charitable purposes. Accordingly, under the reasoning given below, the determination by the Department denying BUSY a sales tax exemption number for the second time should be affirmed. In support thereof, I make the following conclusions:

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.

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). BUSY’s Mission Statement, included in its Bylaws, states that it is a not for profit organization of active, retired employees of ABC BUSINESS and volunteers who seek to find ways of offering financial scholarships to students. “We feel that it is essential to assist with sponsorship in the community for these youth as our future leaders.” “We host fundraisers to secure funds by engaging past, present and future telephone workers and families in this effort.” “We plan to hold a biennial event [to] raise funds to offer a minimum of 3 monetary scholarship awards to high school and college students who demonstrate leadership roles in their community amongst their peers and who ultimately will become viable productive citizens.” Tr. pp. 22-23; Taxpayer’s Ex. No. 4. Ms. Jane Doe described BUSY’s “charity” as “scholarship to students who are on their way from high school to college.” Tr. p. 26.

But the record of this case is inadequate for me to recommend that BUSY be granted a sale tax exemption. BUSY’s Mission Statement indicates that membership in BUSY is open to active, retired employees of ABC BUSINESS and “volunteers.” There is no testimony in the record as to the percentage of ABC BUSINESS members versus “volunteer” members in BUSY. A March 30, 2014, United Church of Christ newsletter states under “Community Events,” that

“ABC BUSINESS Reunion, BUSY Committee presents An Evening of Legends, a scholarship fundraising event, Saturday, April 26, 5:00 p.m., ...” Tr. pp. 13-14, 23-24; App. Ex. No. 1. This is the only document offered into evidence showing the advertisement of BUSY’s fundraiser. The statement in the newsletter “ABC BUSINESS” and the statement in the Bylaws that membership is open to active and retired employees of ABC BUSINESS forces me to conclude that membership and attendance at the fundraiser may consist mainly of ABC BUSINESS employees.

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. The word “exclusively” as used in the phrase “organized exclusively for charitable purposes” has been defined by the Department in a regulation promulgated pursuant to the authority of the ROTA. Regulation 2005(n) provides that if a substantial purpose or activity of the purchaser is not charitable, the Department will not consider the purchaser to be organized and operated exclusively for charitable purposes within the meaning of the ROTA. 86 Ill. Adm. Code § 130.2005(n). 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).

Because BUSY is a membership organization, I cannot determine whether it is organized exclusively for charitable purposes. It is unclear from the record whether BUSY exists primarily for social purposes, “ABC BUSINESS,” or primarily for charitable purposes. Department Regulation 2005(e), entitled “Nonprofit Social, Recreational and Athletic Organizations” notes that organizations which are organized to provide entertainment, social and recreational activities to its members are not organized for charitable purposes even though the organization does some

charitable work. 86 Ill. Adm. Code § 130.2005(e). Tax exemption statutes are to be strictly construed since they are inherently injurious to public funds because they impose lost revenue costs on taxing bodies. Gas Research Institute v. Dep't, 154 Ill. App. 3d 430 (1st Dist. 1987). These lost public funds may, in fact, be otherwise used to fund state programs that benefit the public at large, rather than the active and retired employees of an organization such as ABC BUSINESS.

In 2013, BUSY received 5 applications for scholarships and awarded 4 scholarships. Three of the scholarships were for \$XXXX and one scholarship was for \$XXXX. It is unclear from the record whether scholarships are only offered to the children of BUSY's members or the children of ABC BUSINESS employees. If the primary benefit of an organization flows to its members and not the public, then an exemption will be denied. Anywhere Bar Association v. Department of Revenue, 177 Ill. App. 3d 896 (2d Dist. 1988).

One \$XXXX scholarship was awarded to "Andrea," the daughter of the President of BUSY. One \$XXXX scholarship was awarded to "Zoe," the daughter of John Doe.¹ As of the date of the evidentiary hearing, no scholarships had been awarded for 2014. Tr. pp. 12-13, 18-19, 26-27, 31-32, 44-45. No documentary evidence was offered by BUSY showing what the qualifications were for scholarships.² The scholarships are not mentioned in the Bylaws. According to the testimony, the scholarships are BUSY's "charity." Without more information in the record about the scholarships, I am unable to determine that BUSY's "charity" benefits an indefinite number of persons, one of the characteristics of a charitable organization, according to Korzen. No documentary evidence was offered showing that Andrea and Ember met the

¹ It is unclear from the record if Zoe is also the daughter of Jane Doe,

² According to Ms. Jane Doe's testimony, all of the application materials are available on Busy's website but she did not bring any of the material to the evidentiary hearing. Ms. Jane Doe offered to "bring up" the eligibility criteria "on [her] phone, if that would help." Tr. pp. 27-28.

qualifications for scholarships. No documentary evidence was offered showing why one applicant was refused a scholarship, while Andrea and Zoe were awarded scholarships. Accordingly, I am unable to conclude from the record that charity is dispensed to all who need and apply for it, another characteristic of a charitable organization.

Additionally, BUSY's Bylaws state that scholarship awards must be distributed prior to 11:59 p.m. on July 31 of the end of the fiscal year. The Bylaws state further that "should NOT enough qualified applicants apply within 24 hours of the deadline of the application opening; immediate family members can apply for the scholarships as long as all criteria are met." Tr. pp. 17-18, 21; App. Ex. No. 4. I have never seen this clause in Bylaws before. The clause seems designed to give BUSY a bylaw-sanctioned way to funnel scholarships to "immediate family members."

BUSY offered into evidence two e-mails dated March 1, 2013 and March 11, 2013, both sent to the "Anywhere School for the Arts" which state as follows: FINAL ATTENTION: Scholarship applications now being accepted deadline 3-31-13. Tr. pp. 14-17; App. Ex. Nos. 2 and 3. This is the only evidence in the record that BUSY advertised its scholarships. It is reasonable for me to conclude that if not "enough qualified applicants" applied for scholarships, such that BUSY was able to award 2 of its 4 scholarships to "immediate family members," it may be due to BUSY not advertising the scholarships. The lack of evidence in the record showing that BUSY advertised the availability of scholarships, other than in two e-mails to the same school, is an obstacle in the way of those who need and would avail themselves of the scholarships, if they knew about them.

In summary, of the four scholarships awarded, two were awarded to family members and the other two may have been awarded to children of members of BUSY. One-half of the benefits

of BUSY's scholarships flowed to family members and not the general public and this presents another reason to deny the organization an exemption. With one half of the scholarships going to immediate family members, I am unable to determine that BUSY does not provide gain or profit in a private sense to people connected with it. I must conclude that the scholarships are an incidental act of beneficence and are legally insufficient to establish that BUSY is "exclusively" or primarily a charitable organization. Rogers Park Post No. 108 v. Brenza, 8 Ill.2d 286 (1956).

In the midst of Ms. Jane Doe's testimony about BUSY's financial statements, she advised that she had to leave because she was "very late for my 3 o'clock call." She added that BUSY has a "Financial Committee" of three people but "neither of them were available today."³ Tr. pp. 36-37. The taxpayer, in this case BUSY, 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). To meet this burden of proof, detailed financial information is necessary. Ms. Jane Doe's abbreviated testimony about BUSY's financial statements was confusing and I cannot draw any conclusions from it. In 2013, BUSY collected revenue of \$XXXX, 46% of which was from ABC BUSINESS matching funds and 54% was from contributions from individuals. Fundraising expenses were \$XXXX and scholarship awards were \$XXXX. Tr. pp. 18-19, 28-31; Taxpayer's Ex. Nos. 5 and 6. But with only one year of financial statements in the record, I am unable to conclude with any certainty the source of BUSY's funding and whether Korzen guidelines related to funding are met.

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

³ A pre-trial conference in this case was held on April 16, 2014. On that date, this case was set for an evidentiary hearing on June 9, 2014. Ms. Jane Doe had slightly less than two months to make sure that a member of the Financial Committee was available to testify.

December 3, 2014

Kenneth J. Galvin
Administrative Law Judge