

**ST 16-05**

**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**

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

v.  
**HAPPY GROUP,**

**Taxpayer**

**Docket # XXXX  
Claim for Exemption Number**

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**RECOMMENDATION FOR DISPOSITION**

Appearances: Robin Gill, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Kevin A. Mulcahy, *pro se*, for Happy Group

Synopsis:

The HAPPY GROUP (“taxpayer” or “HAPPY GROUP”) 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 timely protested the denial. An evidentiary hearing was held by administrative law judge John White.<sup>1</sup> The issue presented is 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)). The taxpayer is a member association for people who are or were military members in good standing of the Good Group. The taxpayer claims

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<sup>1</sup> This recommendation has been written by the undersigned, ALJ Linda Olivero. No witnesses testified at the hearing, and the facts are not in dispute.

that it is a charitable organization that operates exclusively for charitable purposes. The Department contends that the taxpayer primarily operates for the benefit of its members and does not operate exclusively for charitable purposes. After reviewing the record, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. The taxpayer is an Illinois not-for-profit corporation that was organized on April 16, 1969. (Dept. Ex. #1, p. 64)
2. The taxpayer is an organization for all Good Group members whose purpose is to advocate and represent the members and families. The taxpayer strives to foster and improve the Good Group; it promotes and undertakes activities and programs of benefit to members, families, and Good Group veterans in order to maintain ongoing well-being. (Dept. Ex. #1, p. 15)
3. According to the taxpayer's Constitution, its purposes are as follows:
  - To promote the national security of the United States of America.
  - To promote, foster, and improve the well-being of active and retired personnel of the Good Group of the State of Illinois.
  - To support and promote such activities and organizations beneficial to such personnel and to engage in charitable, educational, benevolent, civic, and patriotic activities promoting such purposes.
  - To increase the likelihood of achieving HAPPY GROUP's goals by supporting the goals and programs of the Proud Group ["PROUD GROUP"] and the Strong Group ["STRONG GROUP"], to the extent consistent herein, by affiliating with those two organizations and to further increase the likelihood of achieving HAPPY GROUP's goals by, when it is in the HAPPY GROUP's best interests, affiliating with other, similar organizations.
  - To establish and maintain honor and respect for the Good Group. (Dept. Ex. #1, p. 33)

4. The taxpayer employs one part-time Executive Director and one part-time administrative assistant. The remaining work is done by volunteers. (Dept. Ex. #1, p. 3)
5. The taxpayer's members are expected to pay dues, which are graduated based upon rank. During 2012, the annual dues ranged from \$5 to \$20. Free membership is allowed for the first year of membership in the Good Group. (Dept. Ex. #1, p. 4)
6. Membership is automatically terminated by death, resignation, or failure to pay the prescribed dues. (Dept. Ex. #1, p. 35)
7. The executive board may, by majority vote, refuse admission to any applicant for membership or terminate the membership of any member. (Dept. Ex. #1, p. 45)
8. In December 2013, the taxpayer had 6,273 members. (Dept. Ex. #1, p. 58)
9. The taxpayer gives scholarships that are open to dependents, both children and spouses, of members of the taxpayer. In 2014, the taxpayer awarded one \$2,000 scholarship to an Good Group dependent and one \$2,000 scholarship to a Good Group dependent. A third \$700 scholarship was sponsored by ABC Business and was awarded to a dependent of an enlisted Good Group member of the taxpayer. (Dept. Ex. #1, p. 58)
10. The taxpayer sponsors an insurance program (State Sponsored Life Insurance – SSLI) chartered specifically for members and families of the Good Group, not just members of the taxpayer. Every service member in good standing of the Good Group is provided, free of charge, a \$1,000 life insurance policy for the duration of their service in the Good Group. (Dept. Ex. #1, p. 4)
11. Every first year member is eligible to receive, at no cost, a \$10,000 life insurance policy for one year. (Dept. Ex. #1, p. 4)

12. Insurance can be purchased through SSLI at rates comparable to or better than the government service member program called Serviceman's Group Life Insurance (SGLI). The SSLI can be continued after the member leaves active service, whereas SGLI terminates when the service person leaves active service. (Dept. Ex. #1, pp. 4, 60)
13. The taxpayer receives revenue from the SSLI program, which helps offset the cost of operating the taxpayer. (Dept. Ex. #1, p. 4)
14. The taxpayer is exempt from federal income tax under section 501(c)(19) of the Internal Revenue Code as a veterans organization. (Dept. Ex. #1, p. 18)
15. The taxpayer's revenue and expenses as shown on its 2012 Form 990-EZ, Return of Organization Exempt from Income Tax, are as follows:

Revenue:	
Contributions, gifts, and grants	\$ XXXX
Program Service revenue	XXXX
Membership dues and assessments	XXXX
Investment Income	XXX
Other revenue	<u>XXXX</u>
Total revenue	XXXX
Expenses:	
Grants and similar amounts paid	XXXX
Salaries and employee benefits	XXXX
Professional fees/payment to contractors	XXX
Printing, publications, and postage	XXXX
Other expenses	<u>XXXX</u>
Total expenses	XXXX
Net deficit	(XXXX)

(Dept. Ex. #1, p. 21)

16. One of the taxpayer's committees is called Legislation, Research and Archives. According to the bylaws, this committee shall (1) prepare, request the introduction of, and support legislation required to implement the policies of the taxpayer on a State and National level; (2) cooperate with the PROUD GROUP and STRONG GROUP in

providing Congressional committees and members of the Congress with information regarding national security and the HAPPY GROUP; (3) monitor and oppose legislation detrimental to the purposes of the taxpayer; (4) develop and recommend to the executive board the legislative policy of the taxpayer; (5) render an annual report to the taxpayer; and (6) maintain records and archives of the taxpayer. (Dept. Ex. #1, p. 47)

17. The taxpayer is not a registered lobby organization. (Dept. Ex. #1, p. 4)

18. On the taxpayer's Illinois Charitable Organization Annual Report filed with the Attorney General's office, the following are listed under "Charitable Program Description": support the interest of GOOD GROUP members, support defense & veterans causes, and support education & HAPPY GROUP museums. (Dept. Ex. #1, p. 31)

19. The taxpayer publishes a bi-monthly newspaper to inform its members, legislators, and other interested parties of its activities, accomplishments, and news of member achievements. (Dept. Ex. #1, pp. 25, 56)

#### 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 for personal property sold to these organizations. 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 (1<sup>st</sup> Dist. 1991); Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430, 436 (1<sup>st</sup> Dist. 1987).

In order to determine whether the taxpayer is organized and operated exclusively for charitable purposes, the following factors are considered: (1) whether the benefits derived are for 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, earns no profits or dividends, but rather derives its funds mainly from public and private charity and holds them in trust for the objects and purposes expressed in its charter; (3) whether the organization dispenses charity to all who need and apply for it; (4) whether the organization does not provide gain or profit in a private sense to any person connected with it; (5) whether 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; and (6) whether the primary purpose of the organization, not any secondary or incidental purpose, is charitable. Wyndemere Retirement Community v. Department of Revenue, 274 Ill. App. 3d 455, 459 (2<sup>nd</sup> Dist. 1995) (citing Methodist Old Peoples Home v. Korzen, 39 Ill. 2d 139, 156-57 (1968)).<sup>2</sup> 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

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<sup>2</sup> Because these factors are also used to analyze charitable exemptions from property taxes, cases involving property taxes will also be cited. See Wyndemere, *supra*.

Organizations, 274 Ill. App. 3d 461, 466 (2<sup>nd</sup> 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 (1<sup>st</sup> 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 (4<sup>th</sup> Dist. 1990); Balla v. Department of Revenue, 96 Ill. App. 3d 293, 296 (1<sup>st</sup> Dist. 1981). The taxpayer must present sufficient documentary evidence to support its claim. *Id.*

The Department argues that the taxpayer is not organized or operated primarily for charitable purposes, and it does not meet most of the factors in Wyndemere, *supra*, and Methodist Old People's Home, *supra*. The Department contends that the primary function of the organization is to serve the needs of its members, who are active and retired personnel of the Good Group; the taxpayer, therefore, does not benefit 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. The Department states that the taxpayer's income is not derived mainly from private and public charity, and charity is not dispensed to all who need and apply for it. The Department also claims that the taxpayer places obstacles in the way of those who need and would avail themselves of the taxpayer's charitable benefits. The Department believes

that the taxpayer is an organization that benefits its dues paying members, and it is not a charitable organization in a traditional sense.

The taxpayer argues that it benefits all GOOD GROUP members and their families, not just the dues paying members. The taxpayer notes that it serves current and retired airmen and soldiers within the State of Illinois. The taxpayer claims that its benefits include providing scholarships and sending care packages, and its activities are not done for a profit. The taxpayer admitted that most of its funds are received through its insurance program. (Tr. p. 7) The taxpayer contends that it is just trying to serve its members, and all proceeds go back to the members. The taxpayer believes that it is providing charity to its members when it uses its proceeds to serve them. (Tr. p. 13)

The taxpayer's evidence is not sufficient to support its claim for an exemption identification number. The Department's regulation concerning charitable organizations provides, in relevant part, as follows:

“Nonprofit Bar Associations, Medical Associations, Lions Clubs, Rotary Clubs, Chambers of Commerce and other professional, trade or business associations and labor unions, which draw their funds largely from their own members, and as to which an important purpose is to protect and advance the interests of their members in the business world, are not organized and operated exclusively for charitable or educational purposes, even though such organizations may engage in some charitable and educational work. The same conclusion applies to the American Legion, Veterans of Foreign Wars, Amvets, the Daughters of the American Revolution and other similar nonprofit patriotic organizations.” 86 Ill. Admin. Code §130.2005(g)

The taxpayer's description of itself indicates that it is similar to the nonprofit patriotic organizations referred to in the Department's regulation:

The taxpayer is an organization for all Good Group members whose purpose is to advocate and represent the members and families. The taxpayer strives to foster and improve the GOOD GROUP; it promotes and undertakes activities and programs of benefit to members, families, and GOOD GROUP veterans in order to maintain ongoing well-being. (Dept. Ex. #1, p. 15)

The taxpayer receives a good portion of its revenue from dues-paying members, and it has an important purpose of protecting and advancing the interests of its members. The taxpayer is exempt from federal income tax under section 501(c)(19) of the Internal Revenue Code as a veterans organization. The taxpayer is the type of organization that is not allowed an exemption identification number under the Department's regulation. See also Rogers Park Post No. 108 American Legion v. Brenza, 8 Ill. 2d 286 (1956) (purposes of fostering love of country, respect for civil institutions, and benefiting and affording comradeship to its members are patriotic, laudable and public spirited but do not constitute charitable purposes).

The list of purposes in the taxpayer's Constitution confirms that it is not organized primarily for charitable purposes. The taxpayer's primary purpose is to promote the national security of our country and the well-being of the members of the Good Group. The word "charitable" is mentioned in its purposes only in reference to engaging in charitable activities that are beneficial to active and retired personnel of the Good Group. Any charitable purposes are incidental to the primary purpose of representing the interests of the Good Group members and their families.

The taxpayer's activities also indicate that it is not operated primarily for charitable purposes. Because the taxpayer primarily promotes the interests of the members of the Good Group, the taxpayer does not benefit an indefinite number of people and does not relieve a governmental burden. The taxpayer's income is not derived mainly from public or private charity because most of the revenue is from its insurance services and membership dues. In Provena Covenant Medical Center v. Department of Revenue, 384 Ill. App. 3d 734 (4<sup>th</sup> Dist. 2008), *aff'd*, 236 Ill. 2d 368 (2010), the court stated that charity is a "gift;" it is an act of kindness or benevolence. *Id.* at 750. The court added that charity is not merely helpfulness, but

generosity; to be charitable, an organization must give liberally. *Id.* Using its proceeds to serve its members socially or in legislative matters is not a charitable activity. In addition, the amount of actual charity that the taxpayer provides is not exactly clear. The record does not include any information concerning the amount of the care packages or the amount of the free insurance that the taxpayer gives to its members. The value of the scholarships is very small amount in comparison to the taxpayer's annual income, so the record does not indicate a generous amount of giving. Because the evidence does not show that the taxpayer is organized and operated primarily for charitable purposes, the taxpayer is not 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 denied.

Linda Olivero  
Administrative Law Judge

Enter: March 25, 2016