

**ST 06-3**

**Tax Type: Sales Tax**

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

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

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**ABC SCHOOL OF LANGUAGE,**

**Applicant**

v.

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

**No. 05 ST 0000**

Mimi Brin  
Administrative Law Judge

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**RECOMMENDATION FOR DISPOSITION**

**Appearances:** Mr. John C. Dabek for Nicolas ABC School of Language; Shepard K. Smith, Special Assistant Attorney General, for the Illinois Department of Revenue

**Synopsis:**

This matter comes on for hearing pursuant to the protest and request for hearing filed by the Nicolas ABC School of Language (“ABC” or “Applicant”) following the denial by the Illinois Department of Revenue (“Department”) of applicant’s second request for an exemption from the collection of Use tax on purchases made. The applicant claims that it is entitled to such an exemption as it is organized and operated exclusively for educational purposes. Mr. John Doe (“Doe”), applicant’s board president, testified on its behalf. Following the submission of all evidence and a review of the record, it is recommended that this matter be resolved in favor of the Department. In support thereof, I make the following findings of fact and conclusions of law:

**Findings of Fact:**

1. The Department denied, a second time, ABC' application for a tax exemption number under §1g of the Retailers' Occupation Tax Act ("ROT" and "ROTA"), 35 ILCS 120/1 *et seq.* 35 ILCS 120/1g
2. Applicant is an Illinois corporation under the General Not For Profit Corporation Act. Applicant Gr. Ex. No. 10 (Articles of Amendment, December 1989)
3. Applicant is exempt from the payment of federal income taxes pursuant to section 501(c)(3) of the Internal Revenue Code. Applicant Ex. No. 1 (Department of Treasury letter)
4. ABC provides classes in the Polish language, history and culture every Saturday from 8:30 a.m. to 12:30 p.m.; Tr. pp. 19, 20, 59, 61, 62 (testimony of Doe)
5. Classes are for children from pre-school age through high school age. Tr. pp. 20-21
6. Classes are held in classrooms at school in Anywhere, Illinois; Tr. p. 19
7. Applicant pays rent to the school for the space it uses. Tr. p. 20
8. Tuition is paid by every child who attends applicant's classes. Tr. pp. 45-46 (Doe)
9. Salaries are paid to every teacher, with bonus payments if the budget allows. Tr. pp. 28, 43 (Doe)
10. Applicant's foreign language program is recognized as meeting the standards for approval by the Illinois State Board of Education. Applicant

Ex. No. 7 (Foreign Language Application for Approval, December 2004);  
2 (Illinois State Board of Education letter, January 28, 2005)

11. ABC issues certificates to those attendees that complete each year of high school Polish language study in its program, as well certificates to those students that complete each year of Polish language study in the elementary school age range. Applicant Gr. Ex. 9 (Certificates)
12. Applicant sells the books that the children use to the children as one of its fundraisers (Tr. pp. 42, 45) and uses the money it raises for activities and parties for the children. Tr. pp. 42-43
13. Without the tax exemption number, applicant pays the use tax to its vendors for these books it sells, as well as for all of its other supplies. Id.

**Conclusions of Law:**

In Illinois, the Use Tax Act (35 **ILCS** 105/1 *et seq.*) (“UTA”) imposes a tax “upon the privilege of using in this State tangible personal property purchased at retail from a retailer... .” 35 **ILCS** 105/3. This tax must be collected from the purchaser by a retailer and is commonly known as the “sales tax.” Id. at 105/3-45.

There are exemptions to the imposition of the use tax and, specifically, the UTA provides in relevant part, that an exemption applies to “[P]ersonal property purchased by a governmental body, by a corporation, society, association, foundation, or institution organized and operated exclusively for charitable, religious, or educational purposes... .” Id. at 105/3-5 (4). This statutory provision is incorporated into the Retailers’ Occupation Tax Act (35 **ILCS** 120/1 *et seq.*) (“ROTA”) *via* UTA § 105/12. 35 **ILCS** 105/12.

The ROTA, likewise, provides exemptions for the imposition of the sales tax. In relevant part, there is an exemption for “[P]ersonal property sold to a governmental body, to a corporation, society, association, foundation, or institution organized and operated exclusively for charitable, religious, or educational purposes... .” 35 ILCS 120/2-5 (11). An entity that qualifies under this statutory provision “shall make application to the Department for an exemption identification number.” *Id.* at 120/1g. It is under these provisions that ABC seeks an exemption number from the Department as a corporation organized and operated exclusively for educational purposes.

The exemption for educational purposes is more fully defined in the UTA, in pertinent part as:

§ 2c. For purposes of this Act, a corporation, limited liability company, society, association, foundation or institution organized and operated exclusively for educational purposes shall include: all tax-supported public schools; private schools which offer systematic instruction in useful branches of learning by methods common to public schools and which compare favorably in their scope and intensity with the course of study presented in tax-supported schools... .  
35 ILCS 105/2c<sup>1</sup>

In order to qualify for an educational purposes sales tax exemption, an entity must: 1) “offer a course of study which fits into the general scheme of education established by the State”; and, 2) “the course of instruction must lessen the tax burden of the public by providing an education which would otherwise have to be furnished by the State.” Yale Club of Chicago v. Department of Revenue, 214 Ill. App. 3d 468, 474 (1<sup>st</sup> Dist. 1991) (citing Illinois College of Optometry v. Lorenz, 21 Ill. 2d 219, 221 (1961)).

In Illinois, elementary school districts are required by the Illinois School Code, 105 ILCS 5/1-1 (“School Code”), to teach a particular curriculum. See also 23 Ill. Adm.

Code, sec. 1.420, 1.430 (Public School Instructional Program). For grades kindergarten through 8 (“K-8”),<sup>2</sup> Illinois public schools are mandated to instruct in the following areas:

- 1) Language arts, reading and other communication skills
- 2) Science
- 3) Mathematics
- 4) Social Studies, including Holocaust study, Black History, History of Women, Irish Famine History, United States History
- 5) Music
- 6) Art
- 7) Health Education
- 8) Physical Education, daily
- 9) Career Education-Awareness and Exploration
- 10) Safety Education
- 11) Conservation of Natural Resources
- 12) Effective methods for the prevention and avoidance of drug and substance abuse
- 13) American patriotism and the principles of representative government-American Declaration of Independence, the U.S. Constitution, the Illinois Constitution and the proper use and display of the American flag. No student is permitted to graduate to high school without passing a satisfactory examination on these particular subjects.

23 Ill. Adm. Code, sec. 1.430;<sup>3</sup> 105 **ILCS** 5/27-1 *et seq.* (Courses of Instruction-Special Instruction).

In the instant matter, the purpose of ABC’ instruction is to develop fluency in the Polish language (Tr. p. 59) and includes instruction in Polish culture and history. There is no legal requirement in Illinois that K-8 public school education include instruction in these subjects. For children of these grade levels, applicant provides no instruction in science, mathematics or social studies as specified by Illinois law (105 **ILCS** 5/27-20.3, 20.4, 20.5, 20.6, 21), and no art, music, health education, physical education, safety

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<sup>1</sup> The identical provision is found in the ROTA at 35 **ILCS** 120/h.

<sup>2</sup> The School Code does not require pre-kindergarten education in the public school system.

<sup>3</sup> Neither the School Code, nor the pertinent sections of the administrative code mandate the teaching of a foreign language at the K-8 level, therefore, it is reasonable to conclude that the instruction in language arts, reading and communication skills concerns education based upon the English language. See also 105

education, drug education or education on the American Declaration of Independence, the U.S. and Illinois Constitutions. Thus, it is clear that for children who are age-appropriate for kindergarten through 8<sup>th</sup> grade, ABC does not offer “a course of study that fits into the general scheme of education established by the State.” Yale Club of Chicago v. Department of Revenue, supra at 474. Further, since applicant’s course of instruction centers on subjects that the State is not mandated to teach, and it offers no instruction in any area that the State must provide as public education, applicant’s K-8 program does not “lessen the tax burden of the public by providing an education which would otherwise have to be furnished by the State.” Id.

With regard to high school level education, that is, grades 9 through 12, public schools must provide the following for students to receive a diploma:

- 1) Language Arts, 3 years emphasizing reading and writing skills and oral communication<sup>4</sup>
- 2) Mathematics, 2 years
- 3) Science, 1 year
- 4) Social Studies, of which 1 year must be history of the United States and/or American government
- 5) 1 year of: music or art or foreign language or vocational education
- 6) Health education
- 7) Career education
- 8) Physical Education
- 9) Conservation of Natural Resources
- 10) Driver and Safety education
- 11) American patriotism and principles of representative government, the American Declaration of Independence, the U. S. and Illinois Constitutions, and proper use and display of the American flag; “No student shall receive a certificate of graduation without passing a satisfactory examination upon such subjects.”

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**ILCS 5/27-2** (Instruction in all public elementary and secondary schools of the State shall be in the English language except in second language programs...”).

<sup>4</sup> It is reasonable to conclude that this requirement is for skills involving the English language since there is a separate requirement (music or art or foreign language) that can be satisfied with one year of foreign language study.

23 Ill. Adm. Code, sec. 1.440; 105 ILCS 5/27-22 (Required high school courses)

This applicant provides no instruction in science, mathematics or social studies and no art, music, health education, physical education, driver or safety education, drug education or education on the American Declaration of Independence, the U.S. and Illinois Constitutions, for any grade level. On the high school level, the State requires that its public school students satisfy one year of instruction in music or art or foreign language or vocational education. The only area in which ABC offers any instruction in “a course of study which fits into a general scheme of education established by the State” (Yale Club of Chicago v. Department of Revenue, supra at 474) is in the one year foreign language requirement as children who successfully complete the equivalent of high school grades 9 through 12 of Polish language instruction receive public school foreign language credit.

Applicant’s attendance is approximately 500 children. It has “double classes from preschool to 8<sup>th</sup> grade” for an equivalent of 20 classrooms. Tr. p. 20 (Doe)<sup>5</sup> It has one first-year high school classroom, two second-year high school classrooms and one third-year high school classroom for a total of four high school classrooms. Id. It is reasonable to conclude, therefore, that applicant instructs predominantly an elementary school-age population.

The exemption that ABC requests mandates that the entity must be organized and operating exclusively for educational purposes. The term “exclusively” has been determined to mean primary rather than secondary or incidental. People ex. rel. Nordlund v. Association of the Winnebago Home for the Aged, 40 Ill. 2d 91, 101 (1968). The only area in which this applicant offers a course of instruction within the State’s

general education scheme and for which a public tax burden is lessened is for a single-year foreign language requirement on the high school level.<sup>6</sup>

The benefit of this particular instruction is not sufficient to satisfy the primary educational purposes demanded of the tax exemption. First, the State high school foreign language requirement is satisfied with only one year of study, and it is only one subject out of at least 10 others that must be taught to satisfy minimum State education requirements. In addition, a public school need not offer instruction in a foreign language as public high school students can satisfy this subject area requirement by taking, instead, a year of art or music or vocational education. Furthermore, as stated before, at best, the fulfillment of this sole public school educational mandate is not ABC's primary organizational or operational purpose since the majority of its attendees are of elementary school age and instruction in a foreign language is not a State requirement for that age group. I conclude that applicant's primary purpose is to teach the Polish language, Polish culture and history to those persons who wish to pay for the instruction. I also conclude that such subjects are simply not within the scope of Illinois' public school education program.

The well-settled law in Illinois regarding taxation exemption is that a statute granting exemption must be strictly construed in favor of taxation and against exemption. Rogy's New Generation, Inc. v. Department of Revenue, 318 Ill. App. 3d 765, 771 (1<sup>st</sup> Dist. 2000). The exemption claimant has the burden of proving its entitlement clearly and conclusively (id.) with all facts construed and debatable questions resolved in favor

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<sup>5</sup> That is, there are 10 grades of 2 classrooms for each grade.

<sup>6</sup> Applicant offers its instruction in the Village of Niles. Doe testified that the high school in Niles does not offer Polish as a foreign language. Tr. p. 81; Department Ex. No. 2 (Department's First Set of Written

of taxation. Id. ABC has not met its statutory burden to show by clear and convincing evidence that it is organized and operated exclusively for educational purposes pursuant to the criteria established by Illinois law. Yale Club of Chicago v. Department of Revenue, supra.

**WHEREFORE**, for the reasons stated above, it is recommended that the Department's second denial of a sales tax exemption number to the ABC School of Polish Language be affirmed.

Date: February 1, 2006

Mimi Brin  
Administrative Law Judge

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Interrogatories and Notice to Produce Documents) #3 answer by Doe ("Polish language instruction is not offered at public schools.") (emphasis in original).