

**ST 06-8**

**Tax Type: Sales 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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**XYZ BROADCASTING**

**Taxpayer**

**v.**

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

**DOCKET # 04-ST-0000**

**Request for Sales Tax  
Exemption Number**

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**RECOMMENDATION FOR DISPOSITION**

**Appearances:** Mr. W. Bryce Levanti, Ferich/Mager/Green/Ryan, for XYZ Broadcasting Company; Mr. Kent Steinkamp, Special Assistant Attorney General for the Illinois Department of Revenue

**Synopsis:**

The Illinois Department of Revenue (hereinafter referred to as the “Department”) denied the second request of XYZ Broadcasting Company (hereinafter referred to as the “Taxpayer” or “XYZ”) for an exemption identification number which would allow the Taxpayer to purchase tangible personal property at retail free from the imposition of tax under the Illinois Retailers’ Occupation Tax Act and the Illinois Use Tax Act. The Taxpayer protested the denial and an evidentiary hearing was held during which the issue presented was whether Taxpayer is organized as a charitable not-for-profit arts or cultural organization under either Section 3-5(3) of the Use Tax Act (35 ILCS 105/3-5(3)) and the corresponding exemption Section 2-5(9) of the Retailers’ Occupation Tax Act (35 ILCS 120/2-5(9)) and/or exempt under Section 3-5(4) of the Use Tax Act (35 ILCS 105/3-5(4)) and the corresponding exemption Section 2-5(11) of the

Retailers' Occupation Tax Act (35 ILCS 120/2-5(11)). Testifying for the Taxpayer were John Doe, founder of XYZ and Joe Blow a/k/a Joe Blow, station manager and disc jockey of XXX radio station.

Following the submission of all evidence and a review of the record it is recommended that the requested exemption be denied. In support thereof the following Findings of Fact and Conclusions of Law are made in accordance with the requirements of Section 100/10-50 of the Administrative Procedure Act (5 ILCS 100/10-50).

**FINDINGS OF FACT:**

1. The Department's case, inclusive of all jurisdictional elements, is established by the admission into evidence of Department's STAX-304, Second Denial of Sales Tax Exemption, wherein Taxpayer's request for exempt status as a charitable organization was denied. (Dept. Ex. No. 1; Tr. p. 6)

2. The Taxpayer was incorporated under the General Not For Profit Corporation Act of the State of Illinois on April 23, 1993 for:

The purposes for which the corporation is organized are exclusively for education and charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986 (or corresponding provisions of future United States Internal Revenue law) and consistent therewith:

- a. To construct, equip, manage and maintain a community based non-commercial FM broadcasting facility in Carbondale, Illinois, consistent with the laws of the United States;
- b. to raise and expend funds to promote, support, enhance and operate the facilities for the benefit of the community; and
- c. to provide for and carry on such other activities in connection therewith as may be necessary and appropriate

for a non-commercial FM broadcasting facility, and to carry on such additional charitable work as may be consistent with the general purposes of the corporation. (Dept. Ex. No. 1; Taxpayer's Ex. No. 15)

3. Taxpayer is exempt from the payment of federal income tax under Section 501(c)(3) of the Internal Revenue Code pursuant to a determination by the Internal Revenue Service that the Taxpayer qualifies as a public charity. (Taxpayer's Ex. Nos. 1-3)

4. Taxpayer's By-Laws establish that the corporation has three directors that are elected by the directors at the annual meeting of the directors. The directors fix the time and place for the annual meeting to be held in January each year. Directors shall not receive any stated salaries for their services, but by resolution of the board of directors, a fixed sum and expenses of attendance may be paid for each regular or special meeting. The By-Laws authorize the creation of committees and the offices of president, vice-president, secretary and treasurer. The corporation shall maintain a registered office and shall have no members. (Dept. Ex. No. 1)

5. Taxpayer operates XXX Community Thrift Store and XXX radio station in Illinois. (Taxpayer's Ex. Nos. 4 - 14)

6. The area that Taxpayer serves has a diverse college student population. The area has a history of racial violence. (Tr. pp. 12-13, 42)

7. The founder of the Taxpayer decided to make Illinois his home. He became aware that area of the state had no "diverse" radio station. He called the Federal Communications Commission to find out the cost and procedure for establishing a community radio station. With some political help, the radio station was established. (Tr. pp. 10-11)

8. The thrift store gives about \$500 a month to the radio station to help with expenses like utilities, mortgage, purchases of "boards" or CD players and office supplies. If

the radio station has needs the thrift store “can provide money” if it has it. (Taxpayer’s Ex. No. 4; Tr. pp. 23-25)

9. The thrift store is a totally separate operation from the radio station. (Tr. p. 34)

10. The “Comparative Income Statement – XXX January through December 2003”

states:	<u>Jan-Dec '03</u>	<u>Jan-Dec '02</u>
Ordinary income/Expense	Jan – Dec '03	Jan – Dec '02
Income		
RADIO STATION	<u>59,571.42</u>	<u>43,983.14</u>
Total Income	59,571.42	43,983.14
Expense		
BOARD FEES	240.00	80.00
BANK SERVICE CHARGE	3.00	136.00
BALL EXPENSES	5,904.08	612.92
CONFERENCE	939.65	719.92
CREDIT CARD DISCOUNTS	411.15	369.14
DONATIONS	43.05	0.00
FREE SPEECH RADIO/OTHER PRO... 600.00	790.00	
INSURANCE	953.08	1,233.16
LICENSES & PERMITS	1,059.00	890.00
MISCELLANEOUS	8.64	18.00
OFFICE SUPPLIES	1,286.75	903.10
PAYROLL EXPENSES	18,803.49	18,913.43
POSTAGE	543.04	394.08
PROMOTIONAL	2,112.22	395.00
REPAIRS	822.53	0.00
MAINTENANCE	125.35	0.00
SUPPLIES	40.00	59.41
TELEPHONE	1,903.19	1,491.35
T SHIRTS	0.00	607.61
UTILITIES	<u>5,617.82</u>	<u>3,749.74</u>
Total Expense	<u>41,416.04</u>	<u>31,362.99</u>
Net Ordinary Income	18,155.38	12,620.15
Other Income/Expense		
Other Income		
ADOPT-A-WATT	3,935.00	11,528.50
THRIFTSTORE CONTRIBUTIONS	3,312.89	486.02
TOWER RENTAL	4,800.00	4,696.77
INTEREST INCOME	<u>54.19</u>	<u>51.74</u>

Total Other Income	12,102.08	16,763.03
Other Expense		
ACCOUNTING FEES	475.00	400.00
INTEREST	12,703.21	11,313.35
LEGAL & PROFESSIONAL	<u>304.00</u>	<u>0.00</u>
Total Other Expense	<u>13,482.21</u>	<u>11,713.35</u>
Net Other Income	<u>-1,380.13</u>	<u>5,049.68</u>
Net Income	<u>16,775.25</u>	<u>17,669.83</u>

(Dept. Ex. No. 1)<sup>1</sup>

11. Taxpayer's Balance Sheet As of December 31, 2003 states:

	<u>Dec 31, '03</u>	<u>Dec 30, '02</u>
<b>ASSETS</b>		
Current Assets		
Checking/Savings		
CASH ON HAND – THRIFT	534.18	250.00
BANK OF CARBONDALE CHECKING	5,549.31	380.30
CHECKING-THRIFT	2,219.19	-23.28
CHECKING-XXX	<u>0.00</u>	<u>96.95</u>
Total Checking/Savings	<u>8,302.68</u>	<u>703.97</u>
Total Current Assets	8,302.68	703.97
Fixed Assets		
LAND & BUILDING	146,000.00	146,000.00
EQUIPMENT & FIXTURES		
THRIFT STORE EQUIPMENT	800.00	0.00
LEASEHOLD IMPROVEMENTS	8,754.23	0.00
THRIFT	0.00	400.00
XXX	<u>68,481.11</u>	<u>6,568.48</u>
Total EQUIPMENT & FIXTURES	<u>78,035.34</u>	<u>6,968.48</u>
Total Fixed Assets	224,035.34	152,968.48
Other Assets		
ADVANCE TO EMPLOYEES		
XXX	640.09	0.00
XXX	<u>441.27</u>	<u>0.00</u>
Total ADVANCE TO EMPLOYEES	1,081.36	0.00
SAVINGS-ADOPT-A-WATT	<u>1,369.12</u>	<u>11,480.24</u>

<sup>1</sup> Taken verbatim from the document.

Total Other Assets	<u>2,450.48</u>	<u>11,480.24</u>
TOTAL ASSETS	<u>234,788.50</u>	<u>165,152.69</u>
LIABILITIES & EQUITY		
Liabilities		
Current Liabilities		
Other Current Liabilities		
LINE OF CREDIT-BOC	1,500.00	1,000.00
FEDERAL WITHHOLDING	1,660.55	473.11
STATE W/HOLDING	555.31	133.80
JUDGEMENT PAYABLE	<u>343.97</u>	<u>299.78</u>
Total Other Current Liabilities	<u>4,059.83</u>	<u>1,906.69</u>
Total Current Liabilities	4,059.83	1,906.69
Long Term Liabilities		
BOC-EQUIPMENT LOAN	46,394.03	0.00
N/P STEELEVILLE	122,129.06	129,271.02
JOHN DOE LOAN	<u>15,930.22</u>	<u>8,077.24</u>
Total Long Term Liabilities	<u>184,453.31</u>	<u>137,348.26</u>
Total Liabilities	188,513.14	139,254.95
Equity		
Retained Earnings	27,341.74	10,267.80
Net Income	<u>18,933.62</u>	<u>15,629.94</u>
Total Equity	<u>46,275.36</u>	<u>25,897.74</u>
TOTAL LIABILITIES & EQUITY	<u>234,788.50</u>	<u>165,152.69</u>
	(Dept. Ex. No. 1; Taxpayer's Ex. No. 14) <sup>2</sup>	

12. The Taxpayer's "Monthly Income Statement for January through December 2003" states:

	<u>THRIFT</u> <sup>3</sup>	<u>XXX</u>	<u>TOTAL</u>
Ordinary Income/Expense			
Income			
STORE SALES	92,649.56	0.00	92,649.56
RADIO STATION	<u>0.00</u>	<u>59,559.42</u>	<u>59,559.42</u>
Total Income	92,649.56	59,559.42	152,208.98
Expense			
BOARD FEES	0.00	240.00	240.00

<sup>2</sup> Taken verbatim from the documents.

<sup>3</sup> A breakdown of the thrift store on a month-by-month basis is also included in Taxpayer's Ex. No. 14.

BANK SERVICE CHARGE	301.76	3.00	304.76
BALL EXPENSES	0.00	5,904.08	5,904.08
CASH OVER/SHORT	-210.16	0.00	-210.16
CONFERENCE	0.00	939.65	939.65
CONTRACT LABOR	1,273.00	0.00	1,273.00
CREDIT CARD DISCOUNTS	279.36	411.15	690.51
DONATIONS	20.00	43.05	63.05
FREE SPEECH RADIO/ OTHER PROGR...	0.00	600.00	600.00
INSURANCE	532.54	953.08	1,485.62
LICENSES & PERMITS	0.00	1,059.00	1,059.00
MISCELLANEOUS	0.00	8.64	8.64
OFFICE SUPPLIES	150.42	1,286.75	1,437.17
PAYROLL EXPENSES	36,721.48	18,803.49	55,524.97
POSTAGE	0.00	543.04	543.04
PROMOTIONAL	0.00	2,100.22	2,100.22
RENT	33,000.00	0.00	33,000.00
REPAIRS	829.93	822.53	1,652.46
RETURNED CHECKS	47.19	0.00	47.19
MAINTENANCE	618.52	125.35	743.87
SALES TAXES	5,625.89	0.00	5,625.89
SUPPLIES	2,434.86	40.00	2,474.86
TELEPHONE	859.47	1,903.19	2,762.66
TRASH	916.00	0.00	916.00
UTILITIES	<u>3,778.04</u>	<u>5,617.82</u>	<u>9,395.86</u>
Total Expense	<u>87,178.30</u>	<u>41,404.04</u>	<u>128,582.34</u>
Net Ordinary Income	5,471.26	18,155.38	23,626.64
Other Income/Expense			
Other Income			
ADOPT-A-WATT	0.00	3,935.00	3,935.00
THRIFTSTORE – CONTRIBUTIONS	0.00	3,312.89	3,312.89
TOWER RENTAL	0.00	4,800.00	4,800.00
INTEREST INCOME	<u>0.00</u>	<u>54.19</u>	<u>54.19</u>
Total Other Income	0.00	12,102.08	12,102.08
Other Expense			
CONTRIBUTIONS TO XXX	3,312.89	0.00	3,312.89
ACCOUNTING FEES	0.00	475.00	475.00
INTEREST	0.00	12,703.21	12,703.21
LEGAL & PROFESSIONAL	<u>0.00</u>	<u>304.00</u>	<u>304.00</u>
Total Other Expense	<u>3,312.89</u>	<u>13,482.21</u>	<u>16,795.10</u>

Net Other Income	<u>-3,312.89</u>	<u>-1,380.13</u>	<u>-4,693.02</u>
Net Income	<u>2,158.37</u>	<u>16,775.25</u>	<u>18,933.62</u>

(Taxpayer's 's Ex. No. 14)<sup>4</sup>

**The Thrift Store**

13. The founder of the Taxpayer purchased a building and then leased it back to the thrift store for its use. The founder had been in the clothing business for some time and thought he could use Taxpayer's non-profit status to start the thrift store and help support the radio station. The area is not a large metropolitan region. (Tr. pp. 23-24)

**The Radio Station**

14. The call letters of Taxpayer's radio station are XXX. It is located at F.M. The mission statement of XXX is that it " provides a public forum for artistic and cultural expression and for the exchange of ideas among individuals and the community." (Taxpayer's Ex. Nos. 10-12)

15. The Federal Communications Commission (hereinafter "FCC") regulates Taxpayer's radio station. The FCC regulations on non-commercial educational stations have limitations on announcements that can be heard on behalf of entities contributing to the radio stations. (Taxpayer's Ex. No. 13; Tr. pp. 60-61, 63)

16. XXX presents a variety of music including rock, jazz, bluegrass, gospel, folk, hip-hop, blues, experimental, new age, soul and opera. As there are numerous radio stations in the area that carry the top 40's, country and western, and rock and roll, XXX plays only a minimal amount of that type of music. It also airs several different ethnic music programs including Middle Eastern, Japanese, Bluegrass and opera. (Dept. Ex. No. 1; Taxpayer's Ex. No. 6; Tr. pp. 27-28)

17. Taxpayer's programming is for people high school age through 80. (Tr. p. 11)

18. Taxpayer's direct competition is the Illinois University National Public Radio station, WW. At the time XXX was founded, WWW aired classical music 95% of the time and news the remainder. (Tr. pp. 23, 33)

19. XXX broadcasts 78 weekly programs produced locally.<sup>5</sup> Five programs are produced out-of-house.

20. Taxpayer carries seven different talk shows, most of which are produced locally. Topics range from social justice to racial, environmental and legal issues. The station also carries the local public High School football and basketball games, and is paid for that programming. In December it airs the annual local Holiday Sing, and each February it broadcasts the annual Homeless Marathon.<sup>6</sup> (Taxpayer's Ex. No 6; Tr. pp. 39-41, 49)

21. Taxpayer's By-Laws state in Article II that the corporation shall have no members. However, XXX has over 400 members.<sup>7</sup> Student membership is \$10 per year; a family membership is \$25 a year; patron membership is \$100; and a supreme membership is \$250. (Dept. Ex. No. 1; Taxpayer's Ex. Nos. 10, 15; Tr. pp. 18, 45)

22. The income of the radio station is used for "electricity; utilities that we have to pay; water; we have a mortgage on the building; we have a mortgage on the Adopt a Watt for our transmitter that we purchased; we have Joe's salary; we have purchases of boards or CD players; there's office supplies that have to be taken care of, and things of that nature." (Tr. p. 25)

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<sup>4</sup> Taken verbatim from the document.

<sup>5</sup> For example the programs locally produced in the fall of 2003 on Wednesdays included: The 70's Show, Cyril's Cabaret, Folk Fiasco, Electric Blues Hour, Rasta Revolution, Back to Bluegrass, Special Folks, The Grateful Dead, Artists Only, and The Devil's Jukebox.

<sup>6</sup> The Homeless Marathon is a syndicated call in program that addresses issues of the homeless.

<sup>7</sup> Taxpayer's testimony and documents tend to use XXX and the name XYZ interchangeably. For example, in its protest, (Dept. Ex. No. 1) Taxpayer asserted it would produce the articles of incorporation for XXX, however the only articles produced were for XYZ. There is nothing in the record to indicate that XXX is separately incorporated.

23. The station sells underwriting announcements to local businesses, organizations and individuals. The underwriting rates are \$5 per announcement for general station support (scheduled anywhere) and \$7 per announcement for specific program sponsorships. Taxpayer has approximately 55 underwriters. (Taxpayer's Ex. Nos. 6, 9, 13; Tr. p. 51)

24. Taxpayer admits that there is a benefit to an underwriter that has its name mentioned on Taxpayer's station. XXX has four spots for underwriters per hour. Taxpayer's radio station currently operates on a daily basis from 7:00 a.m. to 4:00 a.m. the next morning. (Tr. pp. 33, 61)

25. XXX has one paid employee, the station manager. His salary in 2003 was \$17,500 including bonuses. (Taxpayer's Ex. No. 6; Tr. pp. 18, 37)

26. Taxpayer hosts a Valentine's Ball as an annual fundraising event. Tickets cost \$30. People who have a patron or supreme membership are given tickets to the event. Six to eight percent of Taxpayer's annual budget comes from the Ball. The Ball consists of live bands, a catered dinner with a cash bar, a silent auction and a raffle. (Taxpayer's Ex. No. 12; Tr. p. 46)

27. Taxpayer's eight member Advisory Board advises the Board of Directors. The eight-member Advisory Board is comprised of two permanent members, an attorney and the founder of the Taxpayer, and six other people who are members and have made contributions to the radio station. Taxpayer holds an election each fall for three of the six elected positions. (Tr. pp. 15-16, 44)

28. Taxpayer's three-member Board of Directors oversees the general overall operation of the radio station. The Board is comprised of an accountant, an attorney, and the founder of the Taxpayer. The Board is not compensated for its services. Taxpayer has no capitol stock or shareholders. (Tr. pp. 9, 15-16, 44)

29. The radio station serves seven counties in Illinois and its programs reach approximately 100,000 people. (Tr. pp. 11-12)

### **CONCLUSIONS OF LAW:**

The Retailers' Occupation Tax Act and Use Tax Act (hereinafter collectively referred to as the "Acts") impose taxes in the State of Illinois. The Use Tax 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) The Retailers' Occupation Tax Act (35 ILCS 120/1 *et seq.*) imposes a tax on persons engaged in the business of selling at retail tangible personal property. (35 ILCS 120/2) Sections 2-5 and 3-5 of the Acts provide a list of exemptions from taxation. (35 ILCS 105/2-5; 35 ILCS 120/3-5) One of the exemption provisions at issue, found at 35 ILCS 120/2-5(9) of the Retailers' Occupation Tax Act and 35 ILCS 105/2-5(3) of the Use Tax Act, exempts:

Personal property sold to a not-for-profit arts or cultural organization that established, by proof required by the Department by rule, that it has received an exemption under Section 501(c)(3) of the Internal Revenue Code and that is organized and operated **primarily** for the presentation or support of arts or cultural programming, activities, or services. These organizations include, but are not limited to, music and dramatic arts organizations such as symphony orchestras and theatrical groups, arts and cultural service organizations, local arts councils, visual arts organizations, and media arts organizations. On and after the effective date of this amendatory Act of the 92nd General Assembly, however, an entity otherwise eligible for this exemption shall not make tax-free purchases unless it has an active identification number issued by the Department. (emphasis added)

The Department has promulgated rules pursuant to statutory authority (35 ILCS 120/12), one of which is found at 86 Admin. Code ch. I, Sec. 130.2004, and addresses "Sales to Nonprofit Arts or Cultural Organizations." The rule states: . . .

- b) On and after July 2001, the Retailers' Occupation Tax does not apply to sales of tangible personal property to a not-for-profit arts or cultural organization that establishes that it has received an exemption under Section 501(c)(3) of the Internal Revenue Code and that is organized and operated for the presentation or support of arts or cultural programming, activities, or services. (Section 2-5(9) of the Act)
- 1) Only nonprofit organizations that are organized and operated **primarily** for the presentation or support of arts or cultural programming, activities, or services can qualify for this exemption from sales tax. To demonstrate qualification, an organization must be operated so that its proceeds and activities in their totality are **primarily** devoted to the presentation or support of arts or cultural programming, activities, or services. The fact that an organization is organized and operated **primarily** for the presentation or support of arts or cultural programming, activities, or services must also be reflected in its organizational documents. . . . (emphasis added)

The statute requires that in order to qualify for an exemption under the provisions, the organization must be organized and operated primarily for the presentation or support of the arts. The corporation at issue has two parts: 1) a radio station and 2) a thrift store. The thrift store in 2003 made \$92,649.56 in store sales. The radio station made \$59,559.42. The thrift store, therefore, grossed \$33,090.14 more than the radio station. Both entities netted a profit and both made a considerable amount of money. Furthermore, in 2003 the thrift store contributed \$3,312.89 to the radio station or about \$276 per month. Thus, contrary to the representation by Mr. Egert that the thrift store was founded to support the radio station, it is clear that the thrift store spends relatively little of its income to support the radio station. Further, based upon the financial information provided, the radio station does not need any of the small contributions made by the thrift store in order to operate at a profit. It cannot be concluded, therefore, that

Applicant operates primarily for the presentation or support of arts or cultural programming, activities or services.

In regards to its assertion that the Taxpayer qualifies for an exemption as a “non-for-profit arts or cultural organization” the Taxpayer states in its memorandum that:

XYZ operates XXX for the presentation of artistic and cultural programming in the counties it serves in Illinois. A public radio station qualifies for a sales tax exemption under the Act as an organization that is organized and operated for the presentation of cultural programs and activities. 35 ILCS 120/2-5(9)(2004); *WBEZ Alliance, Inc. v. Illinois Department of Revenue*, 98-PT-0008, pg. 5 (Decided February 24, 1999)(attached as Exhibit ‘A’) (Noting that WBEZ, a publically [sic] supported not-for-profit radio station, qualified for a sales tax exemption.), reversed on other grounds by: *WBEZ Alliance Inc. v. Illinois Department of Revenue*, Circuit Court of Cook County docket number 99-CH-5173 (Decided July 1, 2004) (Taxpayer’s Memorandum p. 7)

The distinction between this case and XXX is that from the financials submitted, the thrift store and the radio station operate independently and are self-sustaining, with the thrift store grossing more money than the radio station. The thrift store is not an arts or cultural organization.

The taxpayer also asserted that the purpose of the thrift store is to support the radio station - if a person cannot contribute money to the radio station they can instead contribute “stuff” to the thrift store. The claim was that the XXX Community Thrift Store recycles all clothing and shoes through businesses to third world countries. All cardboard and aluminum are recycled locally. Some soft cotton is cut into rags and sold to businesses in the area. The thrift store supports the social community agencies in the area with donations of clothing and household items. The thrift store also works with the local county probation office for community service requirements. Taxpayer will offer items free of charge to needy persons who have been victims of fire, theft or other calamities and have been referred by a local agency. The

thrift store is run like a Salvation Army or Goodwill resale shop. This information is provided *inter alia*, in Taxpayer's Ex. No. 4 which is a piece of paper entitled "The XXX Community Thrift Store" and supplies most of the above information with a contact telephone number. It is unknown who wrote the exhibit and the Taxpayer did not supplement the information at hearing. Taxpayer's Ex. No. 5 is an affidavit of the founder of Applicant and as such is self-serving. As such, I cannot conclude that the thrift store operates as delineated in the affidavit.

There is nothing in the record herein to show that the Taxpayer is organized and operated primarily for the presentation or support of arts or cultural programming, activities, or services. According to the documentary evidence and record, the only thing the Taxpayer does is operate a radio station and thrift store, and it makes a profit from both ventures. In addition, the founder and permanent director of the corporation earns money from the rental of the thrift store. Even with the rent paid to the director, the operation of the thrift store is more profitable than the radio station.

The Department's denial of a Taxpayer's claim for an exemption identification number is presumed to be correct, and a taxpayer has the burden of clearly and conclusively proving its entitlement to the exemption. Wyndemere Retirement Community v. Department of Revenue, 274 Ill. App. 3d 455, 459 (2<sup>nd</sup> Dist. 1995); Clark Oil & Refining Corp. v. Johnson, 154 Ill. App. 3d 773, 783 (4<sup>th</sup> Dist. 1987). 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). Rather, a taxpayer must present sufficient documentary evidence to support its claim. *Id.*

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. Wyndemere

Retirement Community v. Department of Revenue, *supra*, at 459. Further, the exemption claimant has the burden of proving its entitlement clearly and conclusively with all facts construed and debatable questions resolved in favor of taxation. *Id.*

Based on the foregoing analysis and law, I conclude that Taxpayer has not met its burden establishing that it qualifies for exemption as a not-for-profit arts or cultural organization.

### **The Charitable Exemption**

Also at issue is Taxpayer's request for a charitable exemption from the Acts. The Acts contain exemption provisions at 35 ILCS 105/3-5 and 35 ILCS 120/2-5. They state that the use or sale of tangible personal property are exempt from the tax imposed by the Acts if the personal property is 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 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); 35 ILCS 120/2-5(11).

Taxpayer requested that it be issued a letter of exemption pursuant to the statutory provisions contained herein. The Department denied the request on the basis that Taxpayer did not demonstrate that it operates for exclusively charitable purposes. (Dept. Ex. No. 1)

Although it was a case concerning a property tax exemption, Illinois courts have found it appropriate to use guidelines set forth in Methodist Old Peoples Home v. Korzen, 39 Ill. 2d 149 (1968) to determine whether an entity qualifies as one organized and operated for charitable purposes for use and sales tax purposes. Wyndemere Retirement Community, *supra*; Friends of Israel Defense Forces v. Department of Revenue, 315 Ill. App. 3d 298, 303-304 (1<sup>st</sup> Dist. 2000). These guidelines are that the entity (1) has no capital, capital stock or shareholders; (2) 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) dispenses charity to all who need and apply for it; (4) does not provide gain or profit in a private sense to any person connected with it; and (5) 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. Methodist Old Peoples Home, *supra* at 156-57.

These factors are not requirements, but are guidelines that are considered in assessing an organization's charitable status. Du Page County Board of Review v. Joint Commission on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461, 468 (2<sup>nd</sup> Dist. 1995) (*leave to appeal denied*, 164 Ill. 2d 561) Illinois courts have long refused to apply this exemption absent suitable evidence that the property in question is owned by an "institution of public charity" and "exclusively used" for purposes which qualify as "charitable" within the meaning of Illinois law. Methodist Old Peoples Home v. Korzen, *supra* at 156.

Taxpayer has been determined to be exempt from the imposition of federal income tax under §501(c)(3) of the Internal Revenue Code, so I therefore conclude that Taxpayer has no capital, capital stock, or shareholders. However, the fact that an organization had been granted a letter of exemption from federal income taxes is not determinative of the issue of whether the property of an organization claiming exemption from real estate taxes was used exclusively for charitable purposes. People ex rel. County Collector v. Hopedale Medical Foundation, 46 Ill. 2d 450 (1970); Clark v. Marian Park, Inc. 80 Ill. App. 3d 1010 (1980).

At issue herein is a corporation that owns and operates a radio broadcasting station and a thrift store. Very little information was offered regarding the thrift store operation. It is unknown if clothing or other items distributed by the thrift store are dispensed to all who need or

apply for them. It is unknown if obstacles are placed in the way of those who would need and would avail themselves of any charitable benefits dispensed by the thrift store.

As one of the guidelines enumerated in Methodist Old Peoples Home v. Korzen, *supra*, is whether a Taxpayer's funds come from public or private charity, the analysis of the source of a Taxpayer's funding is appropriate. In Rotary International v. Paschen, 14 Ill. 2d 480 (1958), the court found that an administrative and coordinating body for various Rotary clubs throughout the world, having as its objective encouraging and fostering ideals of service to local communities, was not a charitable organization using the property for charitable purposes under the property tax code. The court said that objectives of a not-for-profit corporation may be commendable, yet not charitable under the law. *Id.* at 488-89

It is known that the thrift store, from January through December 2003 had sales of \$92,649.56 of which it contributed \$3,312.89 to the radio station for its operation. The payroll expenses for that time period were \$36,721.28. The balance sheet shows net income of \$2,158.37 for the thrift store. The founder of the taxpayer was paid \$33,000.00 for rent of the thrift store building. It is unknown whether that exceeds or is fair market value rental for the area. Although it was asserted that the thrift store supports the social community agencies in the area with donations of clothing and household items, and works with the local county probation office for community service requirements, the standards for that support and program were not identified. Nor was it explained how or when the Taxpayer determined what needy persons it would offer items free of charge if they had been victims of fire, theft or other calamities. I cannot conclude from the above that the operation of the thrift store satisfies the guidelines provided by the Illinois courts in Methodist Old Peoples Home.

The radio station allows its members to have their own shows to broadcast different types of music and diverse programs. Taxpayer's radio station, XXX, is a public broadcasting station that is regulated by the FCC as to the content of its endorsements and underwriting. Underwriters provided 46% of the radio station's income in 2003. The underwriters pay either \$5 or \$7 per announcement for the mention of the name of the person or company that is paying for sponsorship. Taxpayer has an audience of approximately 100,000 listeners that the underwriters are targeting. Although the underwriters are not allowed to do comparative advertising, they are getting their name out to the public. Illinois courts have long ascribed to the following definition of charity originally articulated in Crerar v. Williams, 145 Ill. 625 (1893) that states:

A charity, in a legal sense, may be fully defined as a gift to be applied, consistently with existing laws, for the benefit of an indefinite number of persons, . . . It is immaterial whether the purpose is called charitable in the gift itself if it is so described as to show that it is charitable in its nature. *Id.* at 643.

Simply put, charity is assistance to the needy untainted by motives of private gain. It is a gift for public or benevolent purposes bestowed without compensation.

The difference between advertising and underwriting, according to the Taxpayer's testimony, is that underwriting mentions that the business is sponsoring a program, whereas advertising describes the products of the advertiser and business and how they are better than their competition. Advertisers and underwriters want their actions known and call attention to the name of the advertiser or underwriter. While an underwriter expects a benefit for its donation, a donor expects nothing for a gift. (Tr. pp. 31-32) Taxpayer acknowledges that there must be a benefit to the underwriters and corporate sponsors "because they – they continue to underwrite with us." (Tr. p. 33) Taxpayer admits that underwriting is not a gift, the word

describing charity in Crerar v. Williams, *supra*. Therefore, I cannot conclude that corporate underwriting and sponsorships are public and private charity.

Taxpayer in 2003 earned total income of \$152,208.98 from its combined operations of its store sales and radio station. (Taxpayer's Ex. No. 14) The thrift store sales were \$92,649.56 and the income from the radio station was \$59,559.42. Of that amount, Taxpayer earned \$4,800 by leasing space on its radio tower. That is 8% of Taxpayer's radio station income. Taxpayer is also paid for broadcasting the High School football and basketball games. These payments certainly cannot be described as public and private charity.

In addition, XXX's memberships and donations provide for 35% of its radio station income. Volunteers for the radio station range in age from 17-81 with a wide variety of ethnic backgrounds. The volunteers may have their own radio shows as well as help with the station. In order to be a disc jockey on XXX, a volunteer has to be trained in the operation of the equipment and be familiar with the applicable FCC regulations. Although the testimony was that the DJ and station manager of XXX conducts the training sessions at no cost to the student volunteers, there is nothing in evidence to distinguish the volunteers from members who pay membership fees. Nor is there any evidence of record to show that a volunteer at Taxpayer's radio station is not also a member of XXX - there are over 100 people that volunteer at XXX and approximately 400 members. (Dept. Ex. No. 1; Taxpayer's Ex. No. 6; Tr. pp. 18, 25-27, 52-53)

It is also appropriate to do an analysis of the charter or articles of incorporation of a taxpayer, as well as its funding sources, and how they may be used to further a taxpayer's charitable purpose. The Articles of Incorporation for XYZ state that it is organized for charitable and educational purposes, to construct, equip and manage a non-commercial FM broadcasting facility and to raise and expend funds for that endeavor.

The By-Laws of XYZ state that it has no members, yet XXX has “around 400 members.” (Tr. p. 18) The By-Laws and Articles of Incorporation of XXX radio station were not in evidence, even though XYZ’s protest to the denial of the exemption identification number asserted that those items would be provided at hearing. (Dept. Ex. No. 1) There is nothing in the record to establish that XXX radio station is separately incorporated, with its own purpose clause, in either its By-Laws or Articles of Incorporation, and nothing to establish membership qualifications.

It is well-settled in Illinois that the character and purpose for which a corporation is organized must be ascertained from its Articles of Incorporation. People v. Wyanett Light Co., 306 Ill. 377 (1922); Rotary International v. Paschen, 14 Ill. 2d 480 (1958). The standards for membership and the procedure for any type of waiver of membership fees, if any, were not provided. There is nothing in the record to indicate that someone does not have to be a member to volunteer for XXX or work at the radio station. Therefore, the assertion that the DJ and station manager of XXX conducts the training sessions at no cost to the student volunteers (Tr. p. 27) is not supported by the record.

A purchaser of a patron membership for \$100 or a supreme membership for \$250 is given a ticket to the Valentine Ball, Taxpayer’s main social fundraising event. Others must pay \$30 to be admitted. Although the testimony was that people that help produce the event may get in free, there has been no evidence presented that there is a provision for a waiver of the \$30 fee if a person cannot afford the cost of admission.

Based upon the foregoing, it cannot be said that Taxpayer’s benefits are available to an indefinite number of persons, that the organization dispenses charity to all that need and apply for it, or that there are no obstacles placed in the way of those who need and would avail

themselves of Taxpayer's charitable benefits. It also cannot be said that the exclusive (primary) use of the property is for charitable purposes.

Although Taxpayer's Memorandum asserts that XXX's activities lessen a governmental burden to educate its people, Taxpayer never explained how exposing someone to diverse cultural music would necessarily foster tolerance in the community. (Taxpayer's Memorandum p. 12; Tr. p. 62) Just because the Taxpayer introduces diverse cultural concepts to a listening audience does not necessarily broaden understanding within the community. Taxpayer submitted no evidentiary substantiation for its premise.

There are, in addition, discrepancies in the record. Taxpayer's memorandum<sup>8</sup> asserts that XXX's station manager, Joe Blow is the only salaried employee and in 2003, Mr. Blow made an annual salary of \$17,500. (Taxpayer's Memorandum p. 2) However, the monthly income statement for January through December 2003 for the Taxpayer lists thrift store payroll expenses of \$36,721.48 and XXX payroll expenses of \$18,803.49. (Taxpayer's Ex. No. 14) Taxpayer also asserted that among its charitable contributions to the community is an annual \$500 scholarship to a local high school senior to be used toward tuition at a college or university of that student's choice. (Taxpayer's Memorandum p. 5; Tr. p. 53) However, there is nothing in the financial statements to support that assertion and again it comes from self-serving testimony of Taxpayer's founder.

The Taxpayer has shown that it does not meet the majority of the guidelines set forth in Methodist Old Peoples Home v. Korzen, *supra*, and has not established that it is a charitable organization. Nor can it be stated that Taxpayer operates primarily as a not-for-profit arts or

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the legislature amended the property tax exemption statute at issue in that case. As it is an amendment to the property tax statutes, it does not apply to this matter.

<sup>8</sup> The Special Assistant Attorney General for the Department reserved the right to submit a post hearing response brief. He did not file the brief.

cultural organization that would qualify for an exemption. I am not persuaded that the Taxpayer's activities, however meritorious, should be subsidized by the people's tax dollars. I therefore recommend that the denial of tax-exempt status to XYZ by the Department be sustained.

Barbara S. Rowe  
Administrative Law Judge  
February 16, 2006