

ST 95-16

Tax Type: SALES TAX

Issue: Organizational Exemption From Use Tax (Charitable)

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

XXXXXX)
Applicant)
)
v.) Docket # XXXXX
) IBT # XXXXX
THE DEPARTMENT OF REVENUE)
OF THE STATE OF ILLINOIS)
)

RECOMMENDATION FOR DISPOSITION

SYNOPSIS: The Illinois Department of Revenue (the "Department") received from XXXXX (the "Applicant") an application for a sales tax exemption number. The Department denied the application finding that the Applicant was not an exempt organization. The applicant filed a protest to the findings of the Department and requested a hearing in the matter. At the hearing it was established that the Applicant contracts with the city of Bloomington and the town of Normal to pick up recyclable items. The Applicant also sells recyclable items. It is recommended that the Director of the Department deny the request for the sales tax exemption number.

FINDINGS OF FACT:

1. The Department's position in this matter, namely that the Applicant did not qualify for a sales tax exemption number, was established by admission into evidence of Dept. Ex. Nos. 1-4.

2. Applicant was incorporated under the General Not-For-Profit Corporation Act of the State of Illinois on May 25, 1983. (Dept. Ex. No. 1; Tr. p. 5)

3. Applicant's purposes are:

To recycle paper, aluminum, tin, glass, fuel oils and other products from residents of the community, including particularly low income persons, to manufacturers in order

to reduce shortages of those products and improve the environment of the community.

An additional purpose of the corporation is to encourage interest in and attention to the environmental aspects of a recycling operation and in furtherance thereof, engaging in an education program to the public, including particularly persons of low income, concerning the need and desirability for recycling operations.

An additional purpose of the corporation is to provide financial incentives to persons of low income who engage in recycling activities.

An additional purpose of the corporation is to expand opportunities available to low income persons for employment and to assist such persons in developing skills necessary for such employment.

Upon dissolution or final liquidation of the corporation, the assets of the corporation remaining after payment of its obligations shall be transferred to such charitable organization or organizations in the service area as have purposes substantially similar to those [sic] for which this corporation is organized. (Dept. Ex. No. 1; Tr. pp. 5-7)

4. The Applicant is recognized by the federal government as an organization exempt from federal income tax pursuant to a 501(c)(3) designation issued in August 1985 by the Internal Revenue Service. (Dept. Ex. No. 3)

5. The Applicant was started by XXXXX, a group that has been actively involved and supportive of the Applicant. The involvement includes sharing buildings, employees and volunteers. (Tr. pp. 10-12)

6. Once the volunteer group got the recycling program started, Applicant was able to procure a grant and hire people for a five day week operation. (Tr. p. 12)

7. The Applicant contracts with both the City of Bloomington and the Town of Normal. Both entities have supplied the Applicant with dump trucks at the collection sites. The two municipalities contract with the Applicant and pay the costs that cover the processing of the materials that the Applicant picks up. The municipalities have built the boxes where people discard recyclable materials. The Applicant picks up the recyclable material and distributes them to the market. (Tr. p. 12-14)

8. The contracts with Bloomington and Normal accounted for 80.92

percent of the Applicant's revenue in 1993. (Dept. Ex. No. 1)

9. From May 1994 through April 1995, the Town of Normal agreed to pay Applicant \$11,353.75 per month for a total of \$136,245 for the year. For those funds, the Applicant agreed to maintain and service eight recycling drop box locations, maintain the areas adjacent to the drop boxes, empty the drop boxes, collect weekly office paper from the Town buildings and organize monthly paper drives from March through November. (Post Hearing Ex. No. 1)

10. Of the revenue that the Applicant receives, part of it goes to the Applicant for continuing maintenance and other necessities the Applicant incurs in its function. The other half of the money goes back to the municipalities, which have chosen to return that money to the Applicant. (Tr. pp. 13-14)

11. The town of Normal has donated a building for Applicant's use as an education center. (Tr. p. 14)

12. The Applicant just recently moved into the building and is establishing an XXXXX. (Tr. pp. 14-15)

13. The Applicant requested the sales tax exemption number to buy equipment for the XXXXX. (Dept. Ex. No. 1)

14. A large part of the money that the Applicant receives will go toward establishing the XXXXX. (Tr. p. 17)

15. Applicant's goals with the XXXXX are to network with other environmentally oriented groups in the community and to give them a unified guide toward to environmental education of the community about the importance of environmental issues. The Applicant's main focus is children. Environmental education aids the saving of resources and promotes the necessity for recycling. (Tr. pp. 14-18)

16. Applicant has also established a relationship with Illinois State University for continuing education in the recycling area. (Tr. p. 15)

17. Applicant has been very active in environmental seminars,

workshops and related activities. (Tr. pp. 17-20)

18. Applicant had revenues and support in the amount of \$222,365.00 for the fiscal year ending June 30, 1993. Of the \$222,365, collection fees totaled \$183,491, sales of recycles totaled \$14,748, interest income was \$433 and contributions were \$23,693. (Dept. Ex. No. 1)

19. Applicant's salaries and wages were \$99,924.00 for 1993. (Dept. Ex. No. 1)

20. During the same fiscal year, Applicant's expenses totaled \$215,528.00. Program services expenses were \$182,312.00 and supporting services accounted for the remaining \$33,211.00 (Dept. Ex. No. 1)

CONCLUSIONS OF LAW: Article IX, 2 of the Illinois Constitution of 1970, provides in part as follows:

In any law classifying the subjects or objects of non-property taxes or fees, the classes shall be reasonable and the subjects and objects within each class shall be taxed uniformly. Exemptions, deductions, credits, refunds and other allowances shall be reasonable.

The Illinois statutes provide for exemptions from sales tax. In part, specific exemptions are granted by 35 ILCS 120/2-5:

Exemptions: Gross receipts from proceeds from the sale of the following tangible personal property are exempt from the tax imposed by this Act:...

(11) Personal property sold to a governmental body, to a corporation, society, association, foundation, or institution organized and operated exclusively for charitable, religious, or educational purposes, or to a not-for-profit corporation, society, association, foundation, institution, or organization that has no compensated officers or employees and that is organized and operated primarily for the recreation of persons 55 years of age or older. On and after July 1, 1987, however, no entity otherwise eligible for this exemption shall make tax-free purchases unless it has an active identification number issued by the Department...

Illinois courts have held repeatedly that the burden with sustaining a right to tax exemption is on the person claiming such exemption. Tax exemption provisions in the statutes are to be strictly construed against the Applicant. All facts and debatable questions are to be resolved in favor of taxation. *Follett's Illinois Book and Supply Store v. Isaacs*, 27

Ill.2nd 600 (1963).

The distinct characteristics of a charitable institution are that it has no capital, capital stock or shareholders, earns no profit or dividends, but rather derives its funds primarily from public and private charity. *Gas Research Institute v. The Illinois Department of Revenue*, 154 Ill.App.3d 430 (1987). Exclusively charitable purposes need not be interpreted literally as the entities sole purpose in order to qualify for a sales tax exemption. Exclusively charitable purposes should be construed to mean primary purpose but not merely incidental or secondary purpose or affect. "Charitable purpose" for purposes of exemption from sales tax refers to almost anything which promotes the well being of society and is not forbidden by law.

The law recognizes as charitable those activities which benefit an indefinite number of persons who exercises specific educational or religious influences, engaging in public work otherwise lessening the burdens of the State to care for and advance the interest of its citizens. *Methodist Old Peoples Home v. Korzen*, 39 Ill. 2nd 149 (1968). *Methodist Old Peoples Home* also establishes six guidelines to be used in determining whether or not an organization is charitable. Those six guidelines are:

- (1) The benefits derived are for an indefinite number of persons;
- (2) The organization has no capital, capital stock or shareholders, and does not profit from the enterprise;
- (3) Funds are derived mainly from private and public charity, and are held in trust for the objectives and purposes expressed in its charter;
- (4) Charity is dispensed to all who need and apply for it;
- (5) No obstacles are placed in the way of those seeking the benefits; and
- (6) The primary use of the property is for charitable purposes.

The facts in this case do not support granting a sales tax exemption to the Applicant. The Applicant contracts with government entities to collect recyclable items for the majority of its income. While Applicant's

motives and operations are certainly praiseworthy, the corporation does not fit the recognized definition of a charitable organization. Applicant's operating funds are not derived mainly from private and public charity, nor is charity dispensed to all who need and apply for it, nor does Applicant fulfill the requirement that its use of the property is primarily charitable. The Applicant also earned a profit of \$6,837.00 for the fiscal year ending June 30, 1993.

I therefore recommend that the Director of the Department find that the Applicant has not qualified for a sales tax exemption.

Respectfully Submitted,

Barbara S. Rowe
Administrative Law Judge

June 22, 1995