

ST 09-8

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**

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

No: 08 ST 0000

Sales Tax Exemption

v.

**ABC SPIRITUAL HELPER,

TAXPAYER**

**Kenneth J. Galvin
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Ms. Jane Doe, *pro se*, on behalf of ABC Spiritual Helper, Ms. Paula Hunter, Special Assistant Attorney General, on behalf of the Department of Revenue of the State of Illinois.

SYNOPSIS: ABC Spiritual Helper (hereinafter “ABC”) sought an exemption from the imposition of tax under the Illinois Retailer’s Occupation Tax Act (35 **ILCS** 120/1 *et seq.*) (“ROTA” or “ROT”) and the Illinois Use Tax Act (35 **ILCS** 105/1 *et seq.*) (“UTA” or “UT”) as an entity organized and operated exclusively for charitable purposes. 35 **ILCS** 120/2-5; 105/3-5. On November 17, 2006 the Department of Revenue denied ABC’ request. Dept. Ex. No. 1. ABC protested and requested a hearing following the issuance of the denial.

An evidentiary hearing was held in this matter on April 21, 2009 with testimony from Jane Doe, XXXXX, XXXXX, XXXXX and XXXXX. The sole issue to be determined at the hearing was whether ABC qualified for an exemption identification number as “a corporation, society, association, foundation or institution organized and operated exclusively for charitable ... purposes.” 35 ILCS 120/2-5. Following a careful review of the evidence and testimony presented at the hearing, I recommend that the Department’s denial be affirmed.

FINDING OF FACT:

1. The Department’s case, inclusive of all jurisdictional elements, is established by the admission into evidence of the Department’s denial of exemption dated November 17, 2006. Tr. p. 4; Dept. Ex. No. 1.

CONCLUSIONS OF LAW:

An examination of the record establishes that ABC has not demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant an exemption from sales tax. Accordingly, under the reasoning given below, the determination by the Department denying the applicant a sales tax exemption number should be affirmed. In support thereof, I make the following conclusions.

ABC 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). In Methodist Old People’s Home v. Korzen, 39 Ill. 2d 149 (1968), 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).

Ms. Doe testified that ABC was started on January 25, 2006. Tr. p. 7. Ms. Doe testified that she buys gifts for nursing homes at least three times per year. She also testified that she buys gifts for the mothers and children in homeless shelters, and for the past four years, she gave a gift to every child at her church. Tr. p. 6. "I just make sure every child has a gift during the Christmastime." Ms. Doe makes the decisions as to what nursing homes and what shelters to contact. She testified that the source of ABC's funds for the donations is "from my money, my individual money." Tr. pp. 7-8. Ms. Doe caused to be admitted into evidence the receipts for her purchases. App. Ex. No. 5.

Ms. XXXXX testified that Ms. Doe has always been a "giving person." However, Ms. XXXXX was not involved with ABC and had no information on ABC. Tr. pp. 10-11. Ms. XXXXX testified that Ms. Doe has "been a person of giving to everyone that needs." Tr. p. 12. Mr. XXXXX testified that Ms. Doe is "loyal to helping old people, churches and nursing homes." Tr. p. 16. Mr. XXXXX, Ms. Doe's son-in-law,

testified that Ms. Doe deserves to have whatever help the State can give her. Tr. p. 18. The First Baptist Church acknowledged in a letter to Ms. Doe dated December 13, 2008 that Ms. Doe has given gifts to children and adults in the Church for the past three years. App. Ex. No. 1.

While it is apparent that ABC responds to the needs of the community, the evidence and testimony presented at the hearing were not sufficient for me to conclude that ABC is a charitable institution in accordance with the guidelines set forth in Methodist Old People's Home.

In order to determine whether an organization meets the Methodist Old People's Home guidelines, reliable financial statements are required. No financial statements were offered into evidence for ABC. Without financial statements, I am unable to determine the source of ABC' funding, whether the funds are held in trust for charitable purposes and whether any person profits or gains from the organization. No charter or articles of incorporation or bylaws were offered into evidence by ABC. Without these documents, I am unable to conclude that ABC has no capital, capital stock or shareholders. No statement or description of ABC' charitable policy was offered into evidence. Without evidence of their charitable policy, I am unable to determine whether ABC' benefits are derived for an indefinite number of persons, for their general welfare or in some way reducing the burdens on government, whether charity is dispensed to all who need and apply for it and whether ABC places obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses.

In exemption cases, the taxpayer 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). The Department's denial

of ABC' request for an ROT exemption is presumed to be correct, and ABC had the burden of clearly and conclusively proving that it is entitled to the exemption. Wyndemere Retirement Community v. Department of Revenue, 274 Ill. App. 3d 455 (2nd Dist. 1995). To prove its case, a taxpayer must present more than its testimony denying the Department's determination. The taxpayer must present sufficient documentary evidence to support its exemption. Sprague v. Johnson, 195 Ill. App. 3d 798 (4th Dist. 1990). The evidence and testimony presented at the hearing indicate that ABC may perform some commendable services for the community. However, the absence of documentary evidence in this case forces me to conclude that ABC has not proven, by clear and convincing evidence, that it is a charitable institution in accordance with the guidelines of Methodist Old Peoples Home. For the above stated reasons, I recommend that the Department's determination denying ABC a sales tax identification number be affirmed

ENTER:

Kenneth J. Galvin

May 29, 2009