

ST 12-03

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**

v.

**ABC ASSOCIATION,
TAXPAYER**

No: XXXXX

Sales Tax Exemption

**Kenneth J. Galvin
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Mr. John Doe, *pro se*, on behalf of ABC Association; Mr. John Alshuler, Special Assistant Attorney General, on behalf of The Department of Revenue of the State of Illinois.

SYNOPSIS: ABC Association, (hereinafter “ABC Association”) sought an exemption from the imposition of tax under the Illinois Retailer’s Occupation Tax Act (35 ILCS 120/1 *et seq.*) and the Illinois Use Tax Act (35 ILCS 105/1 *et seq.*) as an entity organized and operated exclusively for charitable purposes. 35 ILCS 120/2-5; 105/3-5. The Department of Revenue denied ABC Association’s request twice, with ABC Association formally protesting and requesting a hearing following the issuance of the Second Denial of Sales Tax Exemption on October 4, 2010. Dept. Ex. No. 1.

An evidentiary hearing was held in this matter on December 13, 2011, with testimony from Mr. John Doe, Founder and Executive Director of ABC Association. The sole issue to be determined at the hearing was whether ABC Association 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 second denial be affirmed.

FINDINGS OF FACT:

1. The Department’s *prima facie* case, inclusive of all jurisdictional elements, is established by the admission into evidence of the Department’s second denial of exemption dated October 4, 2010. Tr. p. 5; Dept. Ex. No. 1.
2. ABC Association was incorporated under the Illinois “General Not For Profit Corporation Act,” on June 26, 2009. ABC Association is exempt from income tax under Section 501(c)(3) of the Internal Revenue Code. Tr. pp. 23-23; App. Ex. Nos. 7 and 8.

CONCLUSIONS OF LAW:

An examination of the record establishes that ABC Association 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 Association 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; (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).

ABC Association caused to be admitted into evidence two brochures describing the organization. One of the brochures states that ABC Association is a “ABC Associationally recognized 501(c)(3) non-profit charitable foundation where injured and disabled workers and their families find the resources and support they need to reclaim their lives” “We use grant-based funding and charitable donations to improve the lives of injured & disabled workers and their families.” “By joining, you’ll become part of a growing movement to restore justice and dignity for injured and disabled workers.” “Plus, you’ll get access to benefits and services reserved for ABC Association’s members that you can’t get anywhere else.” “Our professional directory offers quick access to service providers who are dedicated to helping people with injury, illness, pain and disability!” “And many providers offer discounted services to ABC Association’s

members.” Tr. p. 14; App. Ex. No. 1. Mr. Arbay testified that “[W]e’ve got people with cancer, traumatic brain injury.” “We’ve got vets coming onboard, coming back from ... Afghanistan, and Iraq, they can’t come back to work, whether it’s from an [amputation], or they’ve got PTSD, ... they are in our support groups and we try to provide these resources for them to try to help them find the benefits that they need to get back, whether it’s in the workforce or just to find that support structure for them.” Tr. p. 8.

Another brochure states that the benefits of ABC Association’s membership are access to its bi-monthly publication, “Injured Insider,” access to a wide variety of benefits, exclusive member discounts on products and services, eligibility to apply for grants for financial assistance, access to ABC Association’s community online which is an interactive network of other injured and disabled members that share their experiences, and an extensive directory of professionals that can help the injured and disabled get back on track. Tr. pp. 14-15; App. Ex. No. 2. According to John Doe’s testimony, ABC Association has over 100,000 active members. Tr. p. 7. ABC Association offers a free “Site Accessibility” program for disabled users on its Website, using guidelines established by Section 508 of the Rehabilitation Act. Tr. pp. 17-18; App. Ex. No. 6. There is a professional directory on the website that offers 20% discounts for ABC Association’s members. These discounts are for services of lawyers, doctors, pain management doctors, landscapers and window cleaners. “We are working on getting contracts from Hertz, American Airlines, Hotels.com...” Tr. p. 9.

ABC Association offers a free “ABC Association Drug Card Program” where the uninsured and under-insured can save “10% to 85% on all FDA approved brand-name and generic medications” “The card can be used over and over at over 85,000 pharmacies

nationwide...” The discount drug card is “always free and we require no personal information. Just present the card and save.” Tr. pp. 8, 15; App. Ex. No. 3.

While it is apparent that ABC Association responds to the needs of the community, the evidence and testimony presented at the hearing were not sufficient for me to conclude that ABC Association 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. ABC Association did not offer financial statements into evidence. John Doe testified that funding comes from “public means.” “It could be individuals. It could be companies.” “We do fundraising at Wal-Mart, in front of grocery stores and stuff like that.” “Anything that we can get our hands on.” In 2009 and 2010, no one contributed to the organization. Tr. pp. 10-11. Although the brochures state that membership and benefits in ABC Association are free, I am unable to conclude this as a finding of fact without financial statements in evidence. Additionally, I cannot determine whether funds are derived from public and private charity, whether the funds are held in trust for charitable purposes, and whether ABC Association provides gain or profit in a private sense to persons connected with it without financial statements in evidence.

Three other factors to be considered in assessing whether ABC Association is a charitable organization are whether the benefits derived from ABC Association are for an indefinite number of persons, whether charity is dispensed to all who need and apply for it and whether ABC Association places obstacles in the way of those who would avail themselves of the charitable benefits it dispenses. The evidence and testimony presented at the hearing were not sufficient for me to conclude that ABC Association has met these

guidelines. ABC Association caused to be admitted into evidence testimonials from five of ABC Association's grant recipients. These testimonials show that ABC Association has dispensed \$3,000 in grants for medical treatment, housing and child education. Tr. pp. 15-16; App. Ex. No. 4. John Doe testified that "[W]e provide grants for injured and disabled workers, anything from housing assistance to education assistance for child education to keep their kids in school, trade school, college, whatever it is." Tr. p. 7. Because no financial statements were offered into evidence, I am unable to determine the source of the funding for these grants.

Moreover, the testimony and evidence is insufficient for me to determine what criteria ABC Association uses for assessing whether a person should be afforded charitable care, how many people applied for charitable care from ABC Association and how many were denied, if any. I cannot determine from the limited documentary evidence and the testimony whether the benefits derived from ABC Association are for an indefinite number of persons, whether charity is dispensed to all who need and apply for it or whether ABC Association places obstacles 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 second denial of ABC Association's request for a sales tax exemption is presumed to be correct, and ABC Association 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 Association may perform some commendable services for the injured and disabled. However, the absence of documentary evidence in this case forces me to conclude that ABC Association 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 the applicant a sales tax identification number be affirmed

ENTER:

Kenneth J. Galvin

April 12, 2012