

ST 13-04

Tax Type: Sales Tax

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,**

Docket No: XXXXX

Sales Tax Exemption

v.

**ABC FARMERS' MARKET,
APPLICANT**

**Kenneth J. Galvin
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Ms. Jane Doe, *pro se*, on behalf of ABC Farmers' Market; Mr. John Alshuler, Special Assistant Attorney General, on behalf of the Department of Revenue of the State of Illinois.

SYNOPSIS: On July 18, 2012, the Illinois Department of Revenue (hereinafter the "Department") denied the second request of ABC Farmers' Market (hereinafter "ABC Farmers Market") that the Department issue it an exemption identification number so that it could purchase tangible personal property free from the imposition of use tax as set forth in 35 ILCS 105/1 *et seq.* On July 26, 2012, ABC Farmers Market protested the Department's decision and requested a hearing, which was held on October 24, 2012, with Ms. Jane Doe, President of ABC Farmers Market, and Ms. Mary Black, Senior Program Coordinator for the City of Anywhere, testifying. The sole issue to be

determined at the hearing was whether ABC Farmers Market qualified 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). Following a careful review of the evidence and testimony presented at the hearing, I recommend that ABC Farmers Market be granted an exemption identification number.

FINDINGS OF FACT:

1. The Department’s case, inclusive of all jurisdictional elements, is established by the admission into evidence of the Department’s second denial of exemption dated July 18, 2012. Tr. pp. 7-8; Dept. Ex. No. 1.
2. Illinois residents qualify for “LINK Cards” by demonstrating to the State that they need financial support for food purchases for themselves and their families. Residents with LINK Cards shop at the Anywhere Farmers’ Market and ABC Farmers Market matches whatever the person is spending at the market with grant money. For example, if the resident is planning to spend \$20 at the Farmers’ Market, ABC Farmers Market’ grant money allows them to spend \$40. The City of Anywhere operates a LINK terminal. The buyer tells the terminal operator how much he/she wants to spend at the Market. The City swipes the LINK Card for that amount and gives the buyer double that amount in tokens. The buyer then pays the vendors with the tokens. The vendors turn in the tokens and receive half from the State and half from ABC Farmers Market. Tr. pp. 11-12, 25-28; App. Ex. No. 2.
3. ABC Farmers Market’ “Mission Statement” states that the organization “educates the public about the benefits of eating fresh locally-grown foods and advocates greater access to healthy food for all the community members

regardless of means.” ABC Farmers Market is exempt from income taxes under Section 501(c)(3) of the Internal Revenue Code. ABC Farmers Market is a cooperative effort between the City of Anywhere and community volunteers but Anywhere is responsible for managing the Farmers’ Market. Tr. pp. 9-10, 16-18, 25-26; App. Ex. Nos. 1, 2 and 5.

4. Any food buyer with a LINK Card can participate. Buyers are not required to live in Anywhere. Tr. pp. 26-27.
5. ABC Farmers Market received grants from Anywhere Hospital and North Shore University Health System. In 2010, before ABC Farmers Market started matching, \$2,000 was spent by LINK Card users at the Market. In 2011, \$6,000 was spent by LINK card users with \$6,000 matched by ABC Farmers Market. In 2012 (with two markets remaining in the year), \$12,249 was spent with \$12,249 matched by ABC Farmers Market. Tr. pp. 10-11, 19, 23-24; App. Ex. No. 4.
6. ABC Farmers Market is a membership organization with membership funds supporting web site maintenance, educational materials, publicity for the LINK Card matching fund and signage. Yearly membership levels are \$15, \$25 (Family), \$10 (Student), and \$100 (Business). Membership is open to any individual, family or community institution interested in furthering the purposes of ABC Farmers Market. Tr. pp. 12-13; App. Ex. Nos. 1 and 5.
7. As of December 31, 2011, ABC Farmers Market had \$11,077 in “Income,” of which 37% was “Donations-Members and Board,” 18% was “Contributions In-Kind,” and 45% was “Grant Income.” Expenses totaled \$8,517 resulting in “Net Income” of \$2,559. Expenses included \$5,000 in “Grant Expense,” and

minimal amounts for marketing, membership, education, technology and legal/administrative. No salaries are paid. No Board members are compensated.

Tr. pp. 12-15; App. Ex. No. 3.

CONCLUSIONS OF LAW:

ABC Farmers Market 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). The applicant 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). Moreover, it is well established that there is a presumption against exemption and that therefore, “exemptions are to be strictly construed” with any doubts concerning the applicability of the exemption “resolved in favor of taxation.” Van’s Material Co. Inc. v. Department of Revenue, 131 Ill. 2d 196 (1989). An examination of the record establishes that ABC Farmers Market has demonstrated, by the presentation of testimony and through exhibits and argument, evidence sufficient to warrant an exemption from sales tax.

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). Thus, a rigid formula is not to be applied to all fact situations but instead “courts consider and balance the guidelines by examining the facts of each case and focusing on whether and how the institution serves the public interest and lessens the State’s burden.” *Id.* at 469.

Applying the above guidelines, I conclude that ABC Farmers Market meets the criteria for qualifying as a charitable organization. ABC Farmers Market is a cooperative effort between the City of Anywhere and community volunteers. According to ABC Farmers Market’ Mission Statement, the organization “educates the public about the benefits of eating fresh locally grown foods and advocates greater access to healthy food for all the community members regardless of means.” ABC Farmers Market is exempt from income taxes under Section 501(c)(3) of the Internal Revenue Code. Tr. pp. 9-10; App. Ex. Nos. 1, 2 and 5.

Illinois residents may qualify for “LINK Cards” by demonstrating to the State that they need financial support for food purchases for themselves and their families. Residents with LINK Cards shop at the Anywhere Farmers’ Market and ABC Farmers Market matches whatever the person is spending at the market with grant money. The City of Anywhere operates a LINK terminal. The buyer tells the terminal operator how much he/she wants to spend at the Market. The City swipes the LINK Card for that amount and gives the buyer double that amount in tokens. The buyer pays the vendors

with the tokens. The vendors turn in the tokens and receive half from the State and half from ABC Farmers Market. Tr. pp. 11-12, 25-28; App. Ex. No. 2.

ABC Farmers Market does not have capital stock or shareholders and does not pay dividends. App. Ex. No. 1. As of December 31, 2011, ABC Farmers Market had \$11,077 in "Income," of which 37% was "Donations-Members and Board," 18% was "Contributions In-Kind," and 45% was "Grant Income." ABC Farmers Market received grants from Anywhere Hospital and North Shore University Health System. Tr. p. 10. ABC Farmers Market' Expenses totaled \$8,517 resulting in "Net Income" of \$2,559. Expenses included \$5,000 in "Grant Expense," and minimal amounts for marketing, membership, education, technology and legal/administrative. No salaries are paid. No Board members are compensated. Tr. pp. 12-15; App. Ex. No. 3. I conclude that ABC Farmers Market derives the majority of its funding from private charity and the funds are spent on the objects and purposes expressed in its Bylaws and Mission Statement, as discussed above. I further conclude that ABC Farmers Market does not provide gain or profit in a private sense to any person connected with it.

According to Ms. Mary Black's testimony, any food buyer with a LINK Card can participate in ABC Farmers Market' program. Buyers are not required to live in Anywhere. "We don't ask where anybody lives." Tr. pp. 25-26. I conclude that ABC Farmers Market dispenses its grant money to all who need and apply for it and does not place obstacles in the way of those who need its benefits.

One of the most important factors in determining if an organization is a charity is that the benefits provided serve the public interest or in some way reduce the burden of government. In 2010, Illinois enacted the "Farmers' Market Technology Improvement Program Act," 305 ILCS 43/1 *et seq.* "The purpose of this program is to increase access

to fresh fruits and vegetables and other LINK eligible food products, including quality meat and dairy, for all Illinois residents, by allowing LINK program participants to redeem their SNAP benefits at farmers' markets." Monies received pursuant to this Act will be used for the purchase or rental of wireless point of sale terminals capable of processing benefits disbursed under the LINK program and for "outreach to LINK program participants." 305 ILCS 43/10.

Through this Act, the State of Illinois has clearly recognized the benefits of increasing access by LINK program participants to farmers' markets. Although ABC Farmers Market' matching benefits do not strictly reduce the State's "burden" under the LINK program, the benefits do allow participants to spend more on LINK eligible food products at the Anywhere Farmers' Market. I conclude that this serves the public interest. Additionally, funding under the Act may be use for outreach to LINK program participants. 305 ILCS 43/10. One of ABC Farmers Market' "goals," is to educate the community on nutrition and the benefits of local farmers' markets, inspire residents to eat healthy and to learn about farming, food policy and sustainability. App. Ex. No. 5. These activities may be considered "outreach" under the Act, and may be relieving the State of funding for this activity.

For the foregoing reasons, it is recommended that ABC Farmers' Market be granted an exemption identification number.

ENTER:



Kenneth J. Galvin

March 25, 2013