

ST 15-12

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

v.

ABC BUSINESS, INC.,  
TAXPAYER

No: XXXX  
Sales Tax Exemption

Kenneth J. Galvin  
Administrative Law Judge

**RECOMMENDATION FOR DISPOSITION**

**APPEARANCES:** Jane Doe, *pro se*, on behalf of ABC BUSINESS, Inc.; Ms. Ashley Forte, Special Assistant Attorney General, on behalf of The Department of Revenue of the State of Illinois.

**SYNOPSIS:** ABC BUSINESS, Inc. (hereinafter “ABC Business”) 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 Business’s request, with ABC Business formally protesting and requesting a hearing following the issuance of the Denial of Sales Tax Exemption on August 16, 2013. Dept. Ex. No. 1.

An evidentiary hearing was held in this matter on September 9, 2014, with testimony from Jane Doe, Founder and President of ABC Business. The sole issue to be determined at the hearing was whether ABC Business 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.

**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 Denial of Sales Tax Exemption letter dated August 16, 2013. Tr. p. 8; Dept. Ex. No. 1.
2. No Bylaws or Articles of Incorporation for ABC Business were offered into evidence. ABC Business does not have financial statements. Tr. pp. 24-25.
3. ABC Business’s advertising brochure says that ABC Business “is a non-profit organization with professionals assisting in developing strong families through counseling and training.” “To foster positive interaction utilizing interpersonal skills and value concepts that strengthens family communication, trust and relationships.” According to the brochure, ABC Business offers the following services: Family counseling, child development, effective discipline strategy, decision making and problem solving, self-esteem building, parenting skills and educational planning. The brochure says “Please call for a free introductory consultation.” Tr. pp. 14-15; Taxpayer’s Ex. No. 1.
4. Jane Doe is currently the only person performing services for ABC Business. She works out of an office in her home. When Jane Doe counsels people, she does it at two neighborhood libraries. She has not opened a school or meeting place for ABC Business’s work. Tr. pp. 12, 14, 17, 22, 28, 31.

5. On November 20, 2010, ABC Business presented “the inspirational stage play” entitled “Through It All” by Daniel D. Sprouse. Jane Doe produced the play. Tr. pp. 18-19; Taxpayer’s Ex. No. 3.

**CONCLUSIONS OF LAW:**

An examination of the record establishes that ABC Business 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 Business 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 Business caused to be admitted into evidence an advertising brochure describing the organization. The brochure says that ABC Business “is a non-profit organization with professionals assisting in developing strong families through counseling and training.”<sup>1</sup> “To foster positive interaction utilizing interpersonal skills and value concepts that strengthens family communication, trust and relationships.” According to the brochure, ABC Business offers the following services: Family counseling, child development, effective discipline strategy, decision making and problem solving, self-esteem building, parenting skills and educational planning. The brochure says “Please call for a free introductory consultation.” Tr. pp. 14-15; Taxpayer’s Ex. No. 1. Jane Doe described ABC Business’s “charity” as follows: “We are life skill coaches. We teach... etiquette. We teach character traits, crisis and anger management.” Tr. p. 12. It is unclear who the “we” is in the above testimony. Jane Doe is currently the only person performing the services offered by ABC Business. She works out of an office in her home. When Jane Doe counsels people, she does it at two neighborhood libraries. She has not opened a school or meeting place for ABC Business’s work. Tr. pp. 12, 14, 17, 22, 28, 31.

Jane Doe testified that “a young man called me recently and said his girlfriend is not going to marry him until he gets anger management counseling.” “Another lady on the north side called me because her two daughters are incorrigible and she needed to make them stay home and respect her.” Tr. pp. 27-28. Jane Doe provides counseling for these types of situations. On November 20, 2010, ABC Business presented “the inspirational stage play” entitled “Through It All” by Daniel D. Sprouse. Jane Doe produced the play. Tr. pp. 18-19;

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<sup>1</sup> Jane Doe testified that ABC Business has received 501(c)(3) status from the Internal Revenue Service. Tr. p. 27. No documentary evidence was offered to support this testimony.

Taxpayer's Ex. No. 3. When asked why putting on the play was a charitable activity, Jane Doe responded that the plays that she puts on are "home base plays." "They are not Mary Poppins and West Side Story." "They are the heart of the matter plays." Tr. pp. 29-30.

While ABC Business may be responding to the needs of the community, the evidence and testimony presented at the hearing were not sufficient for me to conclude that ABC Business 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 Business did not offer financial statements into evidence and Jane Doe testified that she did not have financial statements "in the true sense of the word." Tr. p. 25. Without reliable financial statements, I am unable to conclude that ABC Business derives its funds from public and private charity, whether the funds are held in trust for charitable purposes, and whether ABC Business provides gain or profit in a private sense to persons connected with it.

Three other factors to be considered in assessing whether ABC Business is a charitable organization are whether the benefits derived from ABC Business are for an indefinite number of persons, whether charity is dispensed to all who need and apply for it and whether ABC Business 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 Business has met these guidelines. No Articles of Incorporation or Bylaws were offered into evidence. There was no testimony or documentary evidence as to how many people Jane Doe has counseled. Jane Doe testified that she does not charge people "because most people do not have insurance." Tr. p. 13. This testimony must be contrasted with the statement

in the advertising brochure “[P]lease call for a free introductory consultation.” Taxpayer’s Ex. No. 1. There is no explanation in the record as to the cost of the services after the introductory consultation.

Moreover, the testimony and evidence is insufficient for me to determine what criteria ABC Business uses, if any, for assessing whether a person should be afforded charitable care, how many people applied for charitable care from ABC Business and how many were denied, if any. I cannot determine from the limited documentary evidence and the testimony whether the benefits derived from ABC Business are for an indefinite number of persons, whether charity is dispensed to all who need and apply for it or whether ABC Business 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 denial of ABC Business’s request for a sales tax exemption is presumed to be correct, and ABC Business 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 (2<sup>nd</sup> 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 (4<sup>th</sup> Dist. 1990). The evidence and testimony presented at the hearing indicate that ABC Business and Jane Doe may perform some commendable counseling services. However, the absence of documentary evidence in this case forces me to conclude that ABC Business has not proven, by clear and convincing evidence, that it is a charitable institution in accordance with the guidelines of Methodist Old People’s Home. For the above stated reasons, I

recommend that the Department's determination denying ABC Business a sales tax identification number be affirmed.

Kenneth J. Galvin  
Administrative Law Judge

June 29, 2015