

ST 07-11

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**

ABC CORPORATION,

Applicant

v.

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

No. 06-ST-0000
Denial of Application
For Exemption

RECOMMENDED DECISION

Appearances: Ms. Jane Doe, Treasurer for ABC Corporation; Mr. John Alshuler, Special Assistant Attorney General on behalf of the Department of Revenue.

Synopsis: This matter arose from a timely protest to the Department's denial of taxpayer's application for an exemption from Use taxes based on its assertion that it is a charitable enterprise. Following a review of the evidence of record and the testimony presented, it is my recommendation that this matter be resolved in favor of the Department.

Findings of Fact:

1. The prima facie case of the Department was established by the offer and admission into evidence of the notification issued by the Illinois Department of Revenue on March 22, 2006 that the applicant did not qualify as a charitable organization within the meaning of the Retailers'

Occupation and Use Tax Acts and governing regulations. Dept. Ex. No. 1; Tr. pp. 6- 8.

2. The sole representative and witness for ABC¹, one Jane Doe, appearing alone and advising that she did not have an adequate command of the English language, was afforded an interpreter to assist her in presenting testimony. Tr. pp 4-5.
3. Ms. Doe was also advised through the interpreter that she had a right to have an attorney present to represent the corporation. After a brief phone call, Ms. Doe indicated on the record that she would continue on her own on instructions from the president of the corporation. Tr. pp 9-10.
4. Ms. Doe identified herself as the Treasurer of ABC Corporation. Tr. p. 4.
5. Ms. Doe proceeded to present a short narrative on the nature and character of the applicant corporation, averring that ABC is a not-for-profit corporation created to assist indigent individuals, primarily by providing food products to them. Tr. pp 10-12.
6. ABC Corporation holds about four events each year, consisting of brunches, for which tickets are sold and the proceeds used for the organization. All of the money collected from the events goes to the individuals and organizations that are determined to need help. Tr. pp. 11-12.
7. The food for the brunches is donated by XYZ & Associates, board members of ABC, free of charge. Tr. p. 13.

¹ The pretrial order entered in this case on October 6, 2006 indicated that the applicant corporation was prepared to produce a maximum of five witnesses.

8. Between 15 to 20 thousand dollars has been collected and donated by ABC during its three years of operation. Tr. p. 15.
9. In addition to the money raised from the brunches held, ABC received one donation of approximately \$5,000 from an organization known as XXXX. Tr. p. 16.
10. All of the brunches are held at the offices of XYZ & Associates, board members of ABC and are attended by approximately 100 people each time. Tr. p. 17.
11. Ms. Doe is an employee of XYZ & Associates and an unspecified number of people attending the brunches are clients of this business. Tr. p. 18.
12. Five of the ten board members of ABC Corporation are also employees of XYZ & Associates.
13. Following her direct testimony, Ms. Doe was cross-examined on a number of issues by the Department's legal representative. Tr. pp 13-18
14. Subsequent to the Department's cross examination, the witness was asked several questions from the bench about the organizational structure of ABC and how it conducted business. Tr. pp 18-20.
15. While Ms. Doe appeared forthright and credible, at no time during any of her statements or follow-up questioning and at no time during any on the record proceeding did this witness or any other individual connected with the applicant corporation produce any documents to substantiate the assertions being made.

16. No financial statements, no articles of incorporation, no federal exemption certificate, nor any other document of any type or variety relating to ABC Corporation was at any time offered into evidence by the witness or otherwise made available for examination during the proceeding in order to verify any testimony given.

Conclusions of Law:

The Retailers' Occupation Tax Act ("ROTA") exempts from the imposition of the tax, all sales tangible personal property by a retailer to "a corporation, society, association, foundation, or institution organized and operated exclusively for charitable...purposes..." 35 ILCS 120/2-5(11). Due to the fact that the receipts from the sale of such property are exempt from ROT, the purchaser's use of such property is also exempt from Illinois Use Tax ("UT"), pursuant to the provisions of section 3-65 of the Illinois Use Tax Act ("UTA"). 35 ILCS 105/3-65. Effective on and after July 1, 1987, the Illinois General Assembly included in the ROTA at section 2-5(11) the express condition that "no entity otherwise eligible for this exemption shall make tax-free purchases unless it has an active identification number issued by the Department."

This matter involves ABC Corporation's application for exemption identification number, and the Department's denial of that application. Since ABC seeks the exemption, it bears the burden of proof and production to show that it is organized and operated exclusively for charitable purposes. *Chicago Bar Ass'n v. Department of Revenue*, 163 Ill. 2d 290, 300, 644 N.E. 2d 1166, 1171 (1994). The guidelines set forth in *Methodist Old Peoples Home v. Korzen*, 39 Ill. 2d 149, 233 N.E. 2d 537 (1968) are applicable in considering whether an entity is exempt from Illinois Use Tax and

Retailers' Occupation Tax. *Wyndemere Retirement Community v. Department of Revenue*, 274 Ill App. 3d 455, 459, 654 N.E. 2d 608, 611 (2nd Dist. 1995). Those guidelines involve examination of the following six points:

1. Whether the benefits taxpayer provides are for an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare, or which, in some way, reduces the burden on government;
2. Whether taxpayer's organization has any indices of a for profit structure, such as capital stock, or shareholders;
3. Whether taxpayer derives its funds mainly from private and public charity, with the funds held in trust for the objects and purposes expressed in taxpayer's corporate charter;
4. Whether the charity is dispensed to all who need and apply for it, without providing gain or profit in a private sense to anyone connected with the taxpayer;
5. Whether the taxpayer places any obstacles in the way of those seeking benefits from it; and
6. Whether taxpayer is exclusively operated for charitable purposes.

See *Wyndemere*, 274 Ill. App. 3d at 459-60, 654 N.E. 2d at 611-12; *Clark Oil & Refining Corp. v. Johnson*, 154 Ill. App. 3d 773, 783 (1st Dist. 1987).

In proving its case, it is incumbent upon the applicant to present sufficient documentary evidence to support its claim. Simple testimony in opposition to the Department's determination to deny an exemption is not enough to meet the necessary burden of proof. *Sprague v. Johnson*, 195 Ill. App. 3d 798, 803 (4th Dist. 1990). Unfortunately, in this instance, ABC Corp. provided nothing by which to examine and/or evaluate the elements necessary for any exemption from tax to apply. While the testimony of the corporate treasurer, taken by itself, may lead one to believe that ABC Corp. could qualify as a charitable entity, the lack of any substantive documentary evidence to reinforce and substantiate that testimony makes it impossible to fairly conclude that the applicant's burden of proof has been met.

Without the organization's articles of incorporation, its financial statements for the last few years, information delineating its corporate structure or other hard data demonstrating how its activities are organized, sources of funding and other pertinent documentation, it simply cannot be discerned whether any of the criteria set forth in *Korzen, supra*, operate for or against this entity. I am also concerned with the evident and seemingly close ties that ABC Corp. has with XYZ & Association, with its intermingling of employees, board members and funding, as well as the fact that many of those who attend the brunches held by ABC Corp. are clients of GW & A. (See testimony of M. Doe, Tr. p. 18). This raises a real question of whether the financial support ABC does receive is actually through charity or has other purposes and motives. Again, without any financial statements and other books and records to show the income and outflow of funds, these answers cannot be determined. As such, the second and third criteria in particular go unanswered here.

Equally problematic to this case is the fact that there is no documentary evidence showing who or what entities received the purported largesse of ABC Corp. in the disbursement of funds raised, nor how much each may have received or when. Nor do I have any way of knowing the relative ratio(s) of funds dispersed vis-à-vis those raised. Also glaringly absent here is any indication how the process works for the application of assistance from ABC Corp. or what course of procedure its members or board of directors use in ascertaining the need of the applicants for charity. Without this information, the first, fourth and fifth *Korzen* criteria cannot be ascertained.

Inasmuch as the total lack of documentary proof offered here makes it impossible to answer the necessary questions to determine the actual charitable status of this

applicant, ABC Corp. has failed to meet its burden of proof in qualifying for an exemption from Use Tax. As such, it is my recommendation that the initial determination of the Department to deny exempt status be affirmed.

Respectfully submitted:

Richard L. Ryan
Chief Administrative Law Judge

Date: 5/18/2007