

**ST 14-08**

**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**

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

v.

**ABC ORGANIZATION,**

**TAXPAYER**

**Docket No: XXXX**

**Sales Tax Exemption**

**Kenneth J. Galvin  
Administrative Law Judge**

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**RECOMMENDATION FOR DISPOSITION**

**APPEARANCES:** Mr. Joseph A. Cioffi, Cervantes & Cioffi, on behalf of ABC ORGANIZATION; Mr. John Alshuler, Special Assistant Attorney General, on behalf of the Department of Revenue of the State of Illinois.

**SYNOPSIS:** On November 7, 2012, the Illinois Department of Revenue (hereinafter the “Department”) denied the second request of ABC ORGANIZATION (hereinafter “ABC ORGANIZATION” or “applicant”) that the Department issue it an exemption identification number so that it could purchase tangible personal property at retail, free from the imposition of use tax as set forth in 35 ILCS 105/1 *et seq.* On November 16, 2012, ABC ORGANIZATION protested the Department’s decision and requested a hearing, which was held on July 18, 2013, with Mr. John Doe testifying. The sole issue to be determined at the hearing was whether ABC ORGANIZATION 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 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 second denial of exemption dated November 7, 2012. Tr. pp. 6-7; Dept. Ex. No. 1.
2. ABC ORGANIZATION was formed on January 6, 2011 by firefighters from the City of Anywhere. ABC Organization's "Mission Statement" states that its purpose is "for the accumulation and disbursement of collected funds for charitable purposes predominantly in the Anywhere, Illinois area." "This shall be accomplished by the disbursement of funds to organizations in need for food, shelter, clothing, health needs, medical research, catastrophic event intervention, community projects, education, or any other causes that may approved by the Board of Directors." Tr. pp. 8-10, 12; App. Ex. Nos. 1 and 6.
3. ABC ORGANIZATION is exempt from federal income taxes under Section 501(c)(3) of the Internal Revenue Code. Tr. p. 12; App. Ex. No. 2.
4. No directors, officers or employees are compensated by ABC Organization. There are six Board members and all of the six are firefighters. Tr. pp. 12, 15; App. Ex. No. 4.
5. ABC Organization's Income Statement for December 31, 2012 shows "Total Revenues" of \$51,059, of which \$43,559 is "Fundraising Event Revenues." "Program Expenses" are \$34,833, of which \$33,879 is "Program: 2012 Seven Bridges Golf Outing." ABC ORGANIZATION had a positive "Change in Net Assets" of \$15,803, equal to 31% of its Total Revenues. App. Ex. No. 4.

**CONCLUSIONS OF LAW:**

An examination of the record establishes that ABC ORGANIZATION 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 ORGANIZATION 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). 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).

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). 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.

ABC ORGANIZATION was formed on January 6, 2011 by firefighters from the City of Anywhere. ABC ORGANIZATION is exempt from federal income taxes under Section 501(c)(3) of the Internal Revenue Code. Tr. p. 12; App. Ex. No. 2. ABC Organization's "Mission Statement" states that its purpose is "for the accumulation and disbursement of collected funds for charitable purposes predominantly in the Anywhere, Illinois area." "This shall be accomplished by the disbursement of funds to organizations in need for food, shelter, clothing, health needs, medical research, catastrophic event intervention, community projects, education, or any other causes that may be approved by the Board of Directors." Tr. pp. 8-10, 12; App. Ex. Nos. 1 and 6.

ABC ORGANIZATION does not have capital, capital stock or shareholders. ABC Organization's Income Statement for December 31, 2012 shows that 85% of its Total Revenues is derived from "Fundraising Events Revenues" and 15% is from "Long Term Debt." I conclude that the majority of ABC Organization's funding is derived from private and public charity. No directors, officers or employees are compensated by ABC Organization. There are six Board members and all of the six are firefighters. Tr. pp. 12, 15; App. Ex. No. 4. I conclude that ABC ORGANIZATION does not provide gain or profit in a private sense to any person connected with it.

The Income Statement provided by ABC ORGANIZATION does not correspond with the testimony from the evidentiary hearing. Counsel for ABC ORGANIZATION argued, with regard to a golf event sponsored by ABC ORGANIZATION in 2012, that "about seventy five cents on the dollar was used for charitable purposes. Twenty-five cents was used to fund the activity." Tr. p. 15. The Income Statement shows \$43,559 in "Fundraising Event Revenues" and "Program Expenses" of \$33,879 in the caption "Program: 2012 Seven Bridges Golf Outing." The \$33,879 is approximately 78% of \$43,559. But a fair and reasonable reading of the caption "Program Expenses" leads me to conclude that the \$33,879 was the expense of putting on this fundraiser, not the proceeds disbursed to charity from it. I reach this conclusion because the caption "Fundraising

Expenses” in the Income Statement is zero. So if, in fact, it cost ABC ORGANIZATION 25% (approximately \$11,000) to sponsor this fund-raiser as Counsel argued, this 25% cost is not showing up in the Income Statement. App. Ex. No. 4. The Income Statement also shows that ABC ORGANIZATION had a positive “Change in Net Assets” of \$15,803, equal to 31% of its Total Revenues. App. Ex. No. 4. There is no explanation in the record of this case as to why ABC ORGANIZATION retained, and apparently did not donate to charity, 31% of the revenue it collected.

Furthermore, it is unclear from the record what charities received funds from ABC ORGANIZATION and how much was received by each charity. According to John Doe, “[the] hospital foundation, breast cancer and Organization #1 [for Autism Foundation] were the two recipients from last year’s golf outing.” Tr. p. 24. However, the Income Statement only shows disbursements to Organization #2 of \$163 and a purchase of ABC ORGANIZATION T-shirts for \$791. App. Ex. No. 4. “Organization #2 raises money for children’s cancer research.” Tr. p. 23. It is unclear why a donation to Organization #2 and the purchase of T-shirts appears on the Income Statement when donations to the “hospital foundation, breast cancer and Organization #1” and whatever charity received the funding from the golf outing do not.

ABC ORGANIZATION also offered into evidence “initial financial documents that were submitted to the IRS, which covers 2011,” and estimates for 2012 and 2013. Tr. pp. 16-17; App. Ex. No. 3. The calendar year 2012 and 2013 estimates show “contribution, gifts, grants and similar amounts paid out (attach an itemized list)” in the amounts of \$15,000 and \$20,000 respectively. No “itemized list” of estimated contributions was offered into evidence.

So what I am left with from the testimony, exhibits and Counsel’s arguments is that ABC ORGANIZATION raised funds of \$43,559 in 2012. But the record does not allow me to reach any conclusions as to what charities ABC ORGANIZATION disbursed to. Without a complete record of the charities receiving funds from ABC Organization, I cannot conclude that the organization’s

benefits are derived for an indefinite number of persons, for their general welfare or in some way reducing the burdens on government, or that charity is dispensed to all who need and apply for it. It would be unreasonable for me to conclude that ABC ORGANIZATION is an “institution of public charity” without knowing exactly what charities ABC ORGANIZATION donated to and the dollar amount of the donations. An 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, 231 (2d Dist.1991). The exemption can only “apply” if an applicant clearly shows what charities received their funding.

According to Methodist Old People’s Home, in order for an organization to be deemed “charitable,” it cannot place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses. It is unclear from the record how potential recipients of ABC Organization’s charity are apprised that charity is available. There is no evidence in the record that ABC ORGANIZATION used any advertisements or promotions, including signs, brochures or websites, to disseminate information to potential recipients of its charitable proceeds. It is not clear how a potential beneficiary of ABC ORGANIZATION would know how to request charitable assistance. This is an obstacle in the way of those who would avail themselves of ABC Organization’s charity.

Related to the “obstacle” consideration is that it is unclear from the record how ABC Organization’s Board of Directors decides which charities to support. According to John Doe, “we, as a committee – or a board, have determined what [charities] that we go to.” “We do vote on it.” Tr. pp. 20-21. However, I am unable to determine what protocol is utilized by ABC ORGANIZATION in order to determine how one charitable organization might be selected over another. The Bylaws are silent on this issue. App. Ex. No. 5. Whether Directors can direct funds to their favorite charities is unknown and this factor can also justifiably be perceived as an “obstacle” to those who are in need of the charitable benefits that ABC ORGANIZATION dispenses.

Applying the guidelines from Methodist Old People's Home, I conclude that ABC ORGANIZATION has not presented clear and convincing evidence that it is, in fact, a charitable organization. The transcript of the evidentiary hearing in this case is 28 pages and John Doe's testimony is 18 pages. John Doe described the organization as "relatively new" "and we are trying to get our feet [wet]." Tr. p. 25. It would be difficult to justify a charitable exemption even for a well-established organization in 18 pages of transcript. Much of John Doe's testimony was on what ABC ORGANIZATION plans to do in the future such as putting automatic external defibrillators on street corners, funding scholarships and providing assistance for fire and catastrophe victims. Tr. pp. 25, 27. However, I have to base this Recommendation on what ABC ORGANIZATION has done or is currently doing. The record in this case is simply insufficient for me to determine that ABC ORGANIZATION is, at this time, a charitable organization entitled to a sales tax exemption.

For the above stated reasons, I recommend that the Department's determination denying ABC ORGANIZATION a sales tax identification number be affirmed

**April 8, 2014**

**Kenneth J. Galvin  
Administrative Law Judge**