

ST 98-25
Tax Type: SALES TAX
Issue: Organizational Exemption From Use Tax (Charitable)

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

ABC INTERNATIONAL,)	
)	No:
APPLICANT)	
)	
v.)	Sales Tax Exemption
)	Denial
)	
ILLINOIS DEPARTMENT)	Alan I. Marcus
OF REVENUE)	Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

APPEARANCE: Mr. James P. Arndt on behalf of the ABC INTERNATIONAL.

SYNOPSIS: This matter¹ comes on for hearing pursuant to ABC INTERNATIONAL's (hereinafter the "applicant") protest of the Illinois Department of Revenue's (hereinafter the "Department") denial of applicant's request for tax exempt status for purposes of purchasing tangible personal property free from the imposition of Use and related taxes as set forth in 35 **ILCS 105/1 et seq.** At issue is whether applicant qualifies for exemption from such taxes as "a corporation, society, association, foundation or institution organized and operated exclusively for charitable, religious or educational purposes ..." within the meaning of 35 **ILCS 105/3-5(4)**.

1. On June 2, 1997, the ALJ issued an order consolidating this case with a property tax exemption case (Departmental Docket Number XXXXX) filed by the same applicant. These cases arise out of the same set of operative facts and there is little difference in their sum and substance. Nevertheless, I have chosen to write separate Recommendations in order to promote

The controversy arises as follows:

Applicant originally applied for exempt status via correspondence dated November 17, 1992. (Administrative Notice). Numerous correspondences ensued before the Department eventually issued a tentative denial on December 6, 1996. (Dept. Ex. No. 4). Applicant subsequently filed a timely protest and request for hearing on December 27, 1996. (Dept. Ex. No. 6). Following submission of all evidence and a careful review of the record, it is recommended that the Department's tentative denial of exemption 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 Tentative Denial of Exemption, wherein applicant's request for exempt status was denied. (Dept. Ex. No. 4).
2. Applicant was incorporated under the General Not-For-Profit Corporation Act of Illinois on November 22, 1983. Its Articles of Incorporation provide, *inter alia*, that: (1) its primary purpose is the promotion of Islamic education while upholding related religious and educational activities based on the constructs of Islamic ideology; (2) that it intends to develop a comprehensive systematic program of Islamic education for children and adults while promoting research, writing, translation, sales and distribution of vast variety of Islamic literature; (3) it will establish educational institutions for the promotion of the previously-stated objectives; (4) it will strive to better Islamic education in any way possible through the sale of books, donations, grants or general contributions; (5) it will

greater clarity and prevent any confusion associated with technical differences in the sales and

also accept short or long term donations; (6) it will cooperate and interact with other religious organizations and/or educational institutions so as to establish better social understanding; and (7) it will undertake all projects and actions within its powers and allowed by the law to accomplish its objectives. Applicant Ex. No. 1-A.

3. Applicant's by-laws provide that its daily business affairs shall be managed by a Board of Directors. This Board consists of the four corporate officers (president, vice president, secretary, treasurer) and three other members who are elected at an annual meeting. Applicant Ex. No. 1-C.
4. Applicant's by-laws also prescribe specific duties for the Board of Directors as well as the various corporate officers. They also provide that, in the event of dissolution, applicant shall apply its funds first toward satisfaction of all outstanding liabilities but then donate any remaining monies to other organizations having similar objectives. *Id.*
5. Applicant obtained an exemption from federal income tax on December 27, 1987. The Internal Revenue Service granted this exemption pursuant to Section 501(c)(3) of the Internal Revenue Code and based same on its conclusion that applicant qualified as an organization described in Section 509(a)(2) thereof. Applicant Ex. No. 1-D.

6. Applicant's financial structure is based on a calendar (rather than fiscal) year. A financial statement for the year ended December 31, 1996² discloses the following about applicant's sources of revenue:

SOURCE	AMOUNT	% OF TOTAL³
Public Support	\$ 446,435.00	36%
Sale of Books	\$ 720,642.00	57%
Income from Investments	\$ 2,881.00	<1%
Rental Income	\$ 87,092.00	7%
Total	\$1,257,050.00	

Applicant Ex. No. 1-E.

7. The public support came mostly from individual contributions that applicant solicited through various fundraising techniques. Tr. pp. 34, 44.
8. Applicant applied the revenues generated from sales of books toward printing and publishing books and other religious materials. It used these books and publications to educate and inform the public and other organizations about the religion of Islam.⁴ Applicant Ex. No. 1-F.

2. Applicant also submitted its tax returns for the years ending December 31, 1994 and December 31, 1995 (Applicant Ex. Nos. 1-F, 1G). These returns provide a broader view of applicant's financial structure, which (except for the actual numbers and their associated percentages) remained fairly consistent (in terms of having the same basic sources of revenue, congruously expending its revenues on the same central items, etc.) during this three-year period. However, the 1996 financial statement provides the most recent, and therefore, most technically relevant information about applicant's financial structure. Consequently, I shall base Findings of Fact 6, 10, 11, 12 and 13 on the contents of this statement.

3. All percentages shown herein are approximations derived by dividing the category of income or expense (e.g. Public Support) by the appropriate total. Thus, for example, $\$446,435.00/\$1,257,050.00 = 0.3551$ (rounded to 4 places past the decimal) or approximately 36%.

4. Basic Islamic beliefs hold that: (1) One G-D created the universe and all humanity; (2) This G-D has sent His divine guidance to all peoples and nations of the world; (3) Jews and Christians are "people of the Book" with whom Muslims share a "special relationship"; (4) Muhammad is the final prophet, whose message brings the Torah and Gospels to their

9. Applicant derived rental income by leasing office space to various commercial tenants.⁵ Applicant Ex. No. 2-B; Tr. pp. 36-37, 43-44, 120-126.

10. Applicant's operating expenses for the same period were as follows:

SOURCE	AMOUNT	% OF TOTAL
Salaries - Administrative & Other	\$151,349.00	48%
Payroll Taxes	\$ 29,041.00	9%
Health Insurance	\$ 23,828.00	8%
Secretarial Services	\$ 14,332.00	4%
Temporary & Casual Labor	\$ 10,376.00	3%
Library, Dues & Subscriptions	\$ 2,908.00	<1%
Telephone	\$ 17,053.00	5%
Bank Service Charges & Interest	\$ 7,505.00	2%
Conventions & Meetings	\$ 2,714.00	<1%
Postage & Freight	\$ 7,994.00	3%
Repairs & Maintenance	\$ 43,293.00	14%
Legal	\$ 1,245.00	<1%
Audit Fee	\$ 2,000.00	<1%
TOTAL OPERATING EXPENSES	\$313,638.00	

Applicant Ex. No. 1-E.

conclusion and (5) Muhammad's teachings are contained in Islam's holy book, the Qur'an. Tr. pp. 143-145.

5. For details about these rentals and its consequences for the exempt status of the real estate that applicant is seeking to exempt from real estate taxation, *see*, my Recommendation for Disposition in the companion case, Docket No. XXXXX.

11. Expenses associated with applicant's book service and book store (hereinafter its "publishing enterprises") were as follows:

SOURCE	AMOUNT	% OF TOTAL
Salaries	\$100,944.00	17%
Casual Labor & Outside Services	\$ 24,435.00	4%
Writers' Compensation	\$ 23,339.00	4%
Printing Costs & Outside Purchases	\$ 271,210.00	46%
Delivery & Freight	\$ 48,745.00	8%
Outside Consultants	\$ 18,751.00	3%
Shipping & Customs	\$ 4,914.00	1%
Promotion & Advertising	\$ 16,329.00	3%
Office Supplies & Expenses	\$ 13,693.00	2%
Rent & Occupancy Expenses	\$ 35,600.00	6%
Travel & Auto	\$ 19,177.00	3%
Telephone	\$ 2,610.00	<1%
Utilities	\$ 3,767.00	<1%
Conventions & Meetings	\$ 6,465.00	1%
Insurance	\$ 3,723.00	<1%
Repairs & Maintenance	\$ 1,379.00	<1%.
TOTAL EXPENSES ASSOCIATED WITH PUBLISHING ENTERPRISES	\$595,081.00	

Id.

12. Expenses associated with applicant's rentals were as follows:

SOURCE	AMOUNT	% OF TOTAL
Repairs & Maintenance	\$26,190.00	31%
Utilities	\$26,559.00	31%
Supplies & Expenses	\$29,282.00	34%
Insurance	\$ 3,418.00	4%
TOTAL	\$85,449.00	

Id.

13. Applicant's total expenses, from all the above and other sources, were as follows:

SOURCE	AMOUNT	% OF TOTAL
Operating Expenses	\$313,638.00	31%
Publishing Enterprises	\$595,081.00	60%
Rentals	\$ 85,449.00	9%
Grants & Scholarships	\$ 2,000.00	<1%
TOTAL EXPENSES	\$996,168.00	

Id.

14. The grants and scholarships were awarded by a committee of professors. They provided assistance to students in India who otherwise would have been forced to leave school because of economic hardship. Applicant Ex. Nos. 1-F, 1-G.
15. Applicant awarded \$7,700 in grants and scholarships during 1994. It also made \$13,812.00 in such awards during 1995. *Id.*; Applicant Ex. No. 2-G.
16. Applicant paid total wages of \$250,292.79 during 1996. Wage payments for the 16 employees listed on its 1996 Wage and Tax Statements (IRS form W-2) averaged \$15,643.25. However, the individual salaries or wage payments ranged from \$2,500.00 to \$36,000.00. Applicant Ex. No. 1-H.
17. Applicant conducts most of its operations from an office building located at 7450 Skokie Boulevard, Skokie, Illinois 60077.⁶ While applicant actually uses only a portion of this building, it obtained ownership of the entire complex via a Trustee's Deed dated August 15, 1995. Dept. Group Ex. No. 1, Doc. A; Applicant Ex. No. 2-A.

6. For further details about this real estate (the entirety of which is identified by Cook County Parcel Index Numbers 10-28-412-025, 10-28-412-26, 10-28-412-027, 10-28-412-028 and 10-28-412-029) and applicant's use thereof, *see*, my Recommendation for Disposition in Departmental Docket No. XXXXX.

18. Applicant also operates a book store located at FICTITIOUS LOCATION, IL 60659. It sells Islamic books and related items (video and audio cassettes, CD ROMS, etc.) at this store. Applicant Ex. Nos. 2-F; Tr. p. 42.
19. Applicant has published over 50 titles and 20 charts. Its volunteers and employees actively participate in and oversee most phases of the publishing process (selecting and contracting with authors,⁷ editing, preparing the layout, etc.), except for the actual printing and binding, which applicant currently outsources. Applicant Ex. No. 2-F; Tr. pp. 57, 67, 92, 131-133.
20. Applicant's publications include: (1) a workbook for elementary school children entitled "Our Faith and Worship"; (2) "Teachings of Our Prophet," which is a selection of Islamic readings for children; (3) "A Study of Hadith" [sic] an anthology of Islamic literature for older children; (4) "Shapes and Forms of Arabic Letters" and (5) "Teachings of the Qur'an," for children ages 7-9. *Id*; Applicant Ex. No 2-I; Tr. p. 90.
21. Applicant furnishes these and other titles to mosques and Islamic schools. It supplies over 50 such institutions in the Chicago area. Tr. p. 93.
22. Applicant prefers not to give publications away free of charge, although it does receive numerous requests for the Qu'ran and other materials from inner-city schools and incarcerated Muslims. Despite these requests, applicant encourages people to buy. Applicant Ex. No. 1-H; Tr. pp. 93, 98-99, 142.

7. Applicant controls only the actual selection process. Most of those whom it selects are, however, independent writers. Tr. p. 131.

23. The prices that applicant charges for its publications barely cover the out-of-pocket expenses that applicant incurs while producing each publication. Tr. pp. 93-95, 136.
24. The cost of each publication is determined by the quantity printed, so that increases in the amount printed cause decreases in the price that applicant pays for each unit. Tr. p. 94.
25. Applicant currently publishes approximately 5,000 copies of any given book per year, which is not cost effective. It will not achieve cost efficiency until the quantity reaches at least 10,000 copies per year. *Id.*
26. Applicant also develops and publishes preschool, kindergarten and elementary curricula that have been adopted in the educational programs of Islamic schools located in the United States, India, Pakistan and Australia. Applicant Ex. No. 2-G, 2-I, 3-F; Tr. pp. 62, 91, 137.
27. Applicant divides these curricula into the following levels: (1) preschool, for ages 3-6; (2) elementary, for ages 6-9; (3) junior, for ages 9-12 and (4) senior, for ages 12-18. Applicant Ex. No. 2-I.
28. The curricula parallel those taught in private Jewish and Christian school and cover subjects including: (1) Arabic language arts; (2) Qur'anic studies; (3) the Islamic Code of Conduct; (4) presenting Islam; (5) Geography, History and Social Science; (6) translations of contemporary and traditional works; (7) readings with Muslim context and (8) Islamic literature. *Id.*; Tr. p. 91.
29. Applicant presents these and other subjects in the curricula through a series of textbooks, workbooks, parent/teacher guides, enrichment literature and other

educational materials. It subjects each constituent element (and the program as a whole) to rigorous field tests before promulgating the curriculum. Applicant Ex. No. 2-I; Tr. p. 92, 136.

30. The field tests are supervised by applicant's curriculum director and other experts in the field of education. Applicant Ex. No. 2-G.
31. Applicant is also involved in an outreach program aimed at standardizing Islamic education on a world-wide basis. Among the organizations cooperating with applicant's efforts are: (1) the Michigan Educational Council; (2) the Islamic Society of Central Florida; (3) the Muslim Community Center, Maryland; (3) the Moslem Community Center of Chicago, Illinois and (4) the Islamic Foundation of Villa Park, Illinois. *Id*; Tr. p. 170
32. Applicant's executive director and other representatives of ABC participate in various interfaith discussions and other programs that promote religious tolerance among Muslims, Christians and Jews. Applicant Ex. Nos. 2-G, 3-C; Tr. pp. 138-139.
33. Applicant's curriculum director serves on an interfaith committee that advises the Chicago Public School System (hereinafter the "System") on issues ranging from decreasing truancy to improving school and community safety. This committee also helps develop a character and values curriculum for the System. Applicant Ex. Nos. 2-G, 3-A, 3-C.
34. Applicant's other activities include: (1) developing an "Open University" that will provide independent study opportunities for students wishing to pursue Islamic education via correspondence; (2) donating books to the Skokie public library;

(3) participating in an inter-religious perspectives program sponsored by the University of Chicago; (4) providing educational assistance to the Indo-American Center, an organization that sponsors seminars and workshops wherein the participants are affiliated with schools such as Albany Park Multicultural Academy, Clemente High School, Sabin Magnet School, Walter Reed Elementary and Middle School, East Prairie School in Skokie, Lincolnwood School District, Niles West High School and the University of Chicago Laboratory School; (5) conducting and taking part in other workshops that disseminate information about Islamic education and (6) assisting the College Preparatory School of America, (hereinafter "CPSA"),⁸ obtain accreditation from the Illinois State Board of Education. Applicant Ex. Nos. 3-B, 3-C, 3-D, 3-E, 3-F; Tr. pp. 63, 86-87, 93-94.

CONCLUSIONS OF LAW:

An examination of the record establishes that this applicant has not demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to overcome the Department's *prima facie* case. Accordingly, under the reasoning given below, the determination by the Department that applicant does not qualify for exemption from Use and related taxes as a "corporation, society, association, foundation or institution organized and operated exclusively for charitable, religious or educational purposes ..." within the meaning of 35 **ILCS** 105/3-5(4) should be affirmed. In support thereof, I make the following conclusions:

Applicant herein claims the right to an exemption from Use and related sales taxes pursuant to 35 **ILCS** 105/3-5(4), which provides in relevant part that:

8. CPSA is a fully accredited yet private Islamic school located at 331 W. Madison Street, Lombard, IL 60148. It offers a pre-school program as well curricula for kindergarten through 12th grade. Applicant Ex. No. 3-F.

Exemptions. Use of the following tangible personal property is exempt from the tax imposed by this Act:

- (4) Personal property purchased by a government body, by a corporation, society, association, foundation, or institution organized and operated exclusively for charitable, religious or educational purposes ...[.]

35 ILCS 105/3-5(4).

Section 105/2c of the Use Tax Act provides that:

§2c. For purposes of this Act, a corporation, limited liability company, society, association, foundation or institution organized exclusively for educational purposes shall include: all tax-supported public schools; private schools which offer systematic instruction in useful branches of learning by methods common to public schools and which compare favorably in their scope and intensity with the course of study presented in the tax-supported schools; licensed day care centers as defined in Section 2.099 of the Child Care Act of 1969⁹ which are operated by a not for profit corporation, society, association, foundation, institution or organization; vocational or technical schools or institutes organized and operated exclusively to provide a course of study of not less than 6 weeks duration and designed to prepare individuals to follow a trade or pursue a manual, technical, mechanical, industrial, business or commercial occupation.

However, a corporation, limited liability company, society, association, foundation or institution organized and operated for the purpose of offering professional, trade or business seminars of short duration, self-improvement or personality development courses, courses which are avocational or recreational in nature, courses pursued entirely by open circuit television or radio, correspondence courses, or courses which do not provide specialized training within a specific vocational or technical field shall not be considered to be organized and operated exclusively for educational purposes.

35 ILCS 105/2c.

9. 225 ILCS 10/2.09.

The above language does not make any mention of schools that teach religious curricula. Nor does it specifically exclude such schools from the class of those considered "to be organized and operated exclusively for educational purposes." However, this applicant currently does not operate any schools. (Tr. p. 134). Rather, it devises and promulgates curricula that are used in Islamic schools. Thus, it appears more appropriate to analyze whether applicant qualifies for exempt status under the "religious purposes" language contained in Section 105/3-5(4).

The Use Tax Act does not contain a specific definition of the term "exclusively for ... religious purposes ...[.]" However, Illinois courts have long held that, for property tax purposes, the term "exclusively" means "the primary purpose for which property is used and not any secondary or incidental purpose."¹⁰ Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 157 (1968); Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App.3d 186 (4th Dist. 1993).

Our courts have also recognized that "[w]hile religion, in its broadest sense, includes all forms and phases of belief in the existence of superior beings capable of exercising power over the human race, yet in the common understanding and in its application to the people of this State it means the formal recognition of G-D as members of societies and associations." People ex rel. McCullough v. Deutsche Evangelisch Lutherisch Jehova Gemeinde Ungeanderter Augsburgischer Confession, 249 Ill. 132, 136 (1911), (hereinafter McCullough).

Cases decided after McCullough have acknowledged that religious beliefs are not necessarily limited to those which profess an orthodox belief in G-D. *See*, United States v. Seeger, 380 U.S. 163 (1965). However, the following definition of "religious purpose" contained in McCullough, emphasizes a more traditional approach:

10. The present case focuses on applicant's operations, not its use of real estate. Thus, it seems appropriate to replace those portions of the above definition which refer to use with language that reflects applicant's primary function as reflected in its organizational documents and actual operations. Any references to secondary or incidental use should likewise be changed to secondary or incidental function.

As applied to the uses of property, a religious purpose means a use of such property by a religious society or persons as a stated place for public worship, Sunday schools and religious instruction.

McCullough at 136-137.

In Yale Club of Chicago v. Department of Revenue, 214 Ill. App.3d 468 (1st Dist. 1991) (hereinafter "Yale") the court expressly approved the application of property tax exemption principles in the analysis of sales tax exemptions. *Accord*, Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987) (hereinafter "GRI"); Wyndemere Retirement Community v. Department of Revenue, 274 Ill. App.3d 455 (2d Dist. 1995).

Fundamental tenets of this body of case law hold that: (1) a statute exempting property or an entity from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation. People Ex Rel. Nordland v. Home for the Aged, 40 Ill.2d 91 (1968); GRI, *supra*; (2) the party seeking exemption bears the burden of proof. Metropolitan Sanitary District of Greater Chicago v. Rosewell, 133 Ill. App.3d 153 (1st Dist. 1985); and (3) in order to sustain this burden, said party must clearly and convincingly demonstrate that it falls within the appropriate exemption statute. *Id.*

An analysis of whether this applicant has sustained its burden of proof begins with consideration of the language found in its organizational documents. Morton Temple Association v. Department of Revenue, 158 Ill. App.3d 794 (3rd Dist. 1987). In making such consideration, it must be remembered that "statements of the agents of an institution and the wording of its governing documents evidencing an intention to [engage in exclusively exempt activity] do not relieve such an institution of the burden of proving that ... [it] actually and factually [engages in such activity]." *Id.* at 796. Therefore, "it is necessary to analyze the activities of the [applicant] in order to determine whether it is an exempt organization as it purports to be in its charter." *Id.*

In this case, applicant's Articles of Incorporation recite that its primary focus is furthering the cause of Islamic education. This focus is borne out by the financial statement submitted as Applicant Ex. No. 1-E and the various publications admitted as Applicant Ex. Nos. 2-G and 2-I.

The former establishes that applicant derives 57% of its total revenues from the sale of books and devotes 60% of its expenditures to publishing enterprises. Moreover, the latter proves that these enterprises are, with minor exceptions, restricted to developing, proliferating and disseminating Islamic literature that is used in Muslim schools.

These exceptions, best exemplified by the accreditation assistance applicant provided to CPSA and the donations it made to the Skokie Public Library, are consistent with applicant's overall organizational objectives. Even if they were not, such exceptions are incidental¹¹ to applicant's primary function, which, based on the foregoing, I find to be publishing and distributing religious books.

The exempt status of organizations having similar objectives is the subject of a line of decisions that begin with Congregational Sunday School and Publishing Society v. Board of Review, 290 Ill. 108 (1919) (hereinafter "Congregational Sunday School"). *See also*, Scripture Press Foundation v. Annunzio, 414 Ill. 339 (1953) (hereinafter "Scripture Press"); Inter-Varsity Christian Fellowship of the United States of America v. Hoffman, 62 Ill. App.3d 798 (2nd Dist 1978) (hereinafter "Inter-Varsity Christian Fellowship").

Appellant in Congregational Sunday School, *supra*, was a Christian organization whose corporate aim was to publish and distribute books for the purpose of disseminating the views of

11. Illinois courts have long ascribed to the principle that the applicant's primary function, rather than any incidental function(s), determines exempt status. Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156 (1968); Illinois Institute of Technology v. Skinner, 49 Ill.2d 59 (1971). *See also*, *footnote* 10, *infra* at p. 13.

writers (that it employed) on religion and morality. Congregational Sunday School, *supra* at 110. Its operations were divided into four components: (1) maintaining a Sunday school missionary department, which organized Sunday schools and maintained missionaries who visited and assisted in the work of these schools; (2) publishing and circulating a Christian newspaper and other religious periodicals; (3) publishing and selling religious and moral books and (4) composing and publishing Sunday school periodical, lesson helps, etc. which it sold and supplied to Sunday schools of all denominations. *Id.*

Appellant sold its books at an office in Chicago office, although the actual printing and publishing was done in Boston. It sold to whomever wished to buy. However, if a Sunday school could not afford to purchase supplies, or could only afford to pay a fraction of the price, appellant either provided the materials *gratis* or adjusted the price according to the school's ability to pay, as was appropriate to the particular situation. *Id.* at 110-112.

The prices were sufficient to cover whatever expenses appellant incurred in producing its publications. *Id.* A financial statement for the year in question demonstrated that sales of appellant's publications yielded a profit. However, the court noted that such profit did not bar exemption, reasoning that:

The work of the appellant is to send its workers and missionaries into those parts of our land where religious teaching among the young has been neglected, and there to take the young into Sunday schools for moral and religious instruction and provide for them wholesome literature. Many of these books are suitable for the use of adults, and the society seeks to supply the needs of individuals and families by gift where that is necessary but by sale whenever a sale is practicable. The price received, whatever it may be, makes a gift to needy persons possible to the amount so received beyond that which the [appellant] could otherwise give. It is not the use to be made of the profits but the nature of the business done that is to be considered in deciding the question of liability to taxation. We

have already pointed out the purposes for which [appellant] was organized and the four-fold nature of its business. Sales of publications by this [appellant], whether at profit, at actual cost, or half cost, are in aid of the gratuitous distribution of the same publications among those who are able to buy them.

Id. at 117-118.

Based on this reasoning, the court concluded that:

It seems clear that the predominant object of appellant in the use of its stock of books and Sunday school supplies in Chicago is to spread the gospel and to elevate humanity by means of written words embodied in its religious and moral books and in its Sunday school lesson-helps. The only means by which it can spread this gospel in printed form is by distribution of its books and Sunday school supplies. The purposes of appellant are directly carried out by the distribution and supplies, and the receipt of the money from sales is incidental and secondary. It is not the profits from the sale of the books that accomplish the purposes of the appellant, but it is the distribution of the book, periodicals and lesson-helps - and therefore the use of the property sought to be taxed - that directly accomplishes appellant's religious charitable^[12] and beneficent purposes.

Id. at 123. *Accord*, Inter-Varsity Christian Fellowship, *supra*, at 801.¹³

The most recent case to expound on this reasoning is Evangelical Teacher Training Association v. Novak, 118 Ill. App.3d 21 (2nd Dist. 1983). (hereinafter "Novak"). That case involved a real estate tax exemption claim raised by an organization that, *inter alia*: (1) was organized by five Bible colleges for purposes of upgrading Christian education at various levels, including seminary studies, adult education, and Sunday schools; (2) sent its staff members to

12. For discussion of the charitable exemption and its application to this case, *see, infra* at pp. 19-24.

13. The Inter-Varsity Christian Fellowship court also distinguished Scripture Press, *supra*, wherein the court upheld the denial of an exemption from unemployment contributions. Those interested in the court's analysis of those distinctions are referred to Inter-Varsity Christian Fellowship, *supra* at 801-803. For additional criticism of Scripture Press, *see*, McKenzie v. Johnson, 98 Ill.2d 87, 98-99.

speak at local chapel services and classes, as well as national conferences on the subject of Christian education; and (3) prepared materials for 14 separate Bible course offerings, which included texts, cassette tapes, overhead masters, instructor's guides and lesson plans. Novak, *supra* at 22-23.

Employees of the organization at issue in Novak (which was the appellee therein) did not actually write these materials. They did, however, partake in their editing, distribution and sale as well as conduct seminars at schools and conventions. While these employees "may" have distributed appellee's materials free of charge at such seminars, appellee itself "often" donated its course and text materials to libraries and mission schools free of charge. Novak, *supra* at 23-24.

Appellee made these donations even though it did not produce any materials specifically designated for distribution without charge. It also sold the materials to those who were able to afford them. Appellee offset the losses from its donations with income from "high volume textbook" sales and placed any donations that it received into a Christian education scholarship fund that promoted its teacher training program in Third World Countries. *Id.*

The court viewed the above facts as raising a very specific issue, that being "whether the providing and promoting of a common course in teacher training which instructs on the general principles and specific methods of teaching with particular emphasis given to Bible studies, personal evangelism and missions is within the `religious' [property] tax exemption."¹⁴ Novak, *supra* at 24.

14. The statute which authorized that exemption during the tax year at issue in Novak was found in Ill. Rev. Stat. 1981, ch. 120, ¶ 500.2. Its current version is (as noted above) contained in 35 **ILCS** 200/15-40.

In holding that the property at issue therein, from which appellee conducted all of its administrative functions, fell within those provisions, the court reasoned:

... that both Congregational Sunday School, [*supra*] and Inter-Varsity Christian Fellowship, [*supra*] involve[d] claims based on both religious and charitable purposes,^[15] while this appeal is confined only to the claim for religious exemption. While the analysis required for charitable purposes^[16] may not be identical in all situations with that applicable to the religious exemption, it is a fair inference from the authorities that many of the same factors may be common to both claims for exemption in determining whether a religious or secular purpose is being performed. Thus, in [Congregational Sunday School], the court noted, they are so closely associated that we will discuss them together." *Congregational Sunday School & Publishing Society v. Board of Review*, (1919) 290 Ill. 108, 112. See also, *Scripture Press Foundation v. Annunzio*, (1953) 414 Ill. 339, 357-58.

15. Both Congregational Sunday School, *supra*, and Inter-Varsity Christian Fellowship, *supra*, involved claims for exemption from personal property taxes. Although such taxes were abolished as of January 1, 1979 pursuant to Article 9, §5(c) of the Illinois Constitution of 1970 (See, 35 ILCS 200/24-5 and its predecessor provisions, 35 ILCS 205/18.1 and Ill. Rev. Stat. 1991, ch. 120, ¶ 499.1; *People ex. rel. Bosworth v. Lowen*, 155 Ill. App.3d 855, 863 (3rd Dist. 1983), *aff'd*, 102 Ill.2d 242 (1984)), such eradication does not *ipso facto* nullify the case law that governed exemption from such taxes prior to abolition.

Had the Constitutional framers or other authorities intended this result, they would have promulgated an appropriate nullifying mandate long before the Novak court (which rendered its decision *after* the personal property tax was abolished) rendered its decision. Such a mandate did not exist at the time Novak was decided, for, if it did, the court's reliance on Congregational Sunday School, *supra*, and Inter-Varsity Christian Fellowship, *supra* would have violated the doctrine of *stare decisis* and other fundamental principles governing judicial adjudication. More importantly, Novak and the cases cited therein have not been overruled as of the present date. Therefore, such cases constitute precedent for this Recommendation.

16. Those requirements currently arise from the statutory provisions contained in 35 ILCS 200/15-65, which, in relevant part, exempts from real estate taxation property owned by "institutions of public charity," provided that such property is "actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit[.]"

While the [appellant] county broadly asserts that [appellee's] stated purpose to improve Christian education at academic and local levels, is only accomplished through the sale of its religious books and materials others, who in turn conduct the "religious" oriented activity, the opposite is manifest from the record. The chief officers of [appellee] are both ministers and doctors of education. Their activities are primarily directed toward the teaching and demonstration of teacher training techniques, as is disclosed by their exhaustive travel, lecture, and workshop schedule. These travel and speaking activities serve to directly accomplish [appellee's] corporate purpose, the promotion of Christian education, in a manner which could not be achieved through the mere sale and distribution of its books and religious materials.

Novak, *supra* at 26. [Citations as they appear in the original].

In applying this analysis, the Novak court did not cite Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156 (1968) (hereinafter "Korzen"), which is the leading case in the realm of charitable exemptions. Nor did the Novak court make any analysis of the guidelines articulated in Korzen.¹⁷ Rather, the court merely noted that, *in the context before it*, separate

17. These criteria begin with the ensuing definition, which is then followed by recitation of five "distinctive characteristics" common to all "institutions of public charity[:]"

... charity is a gift to be applied consistently with existing laws, for the benefit of an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare - or in some way reducing the burdens of government.

Korzen, *supra* at 156-157, citing Crerar v. Williams, 145 Ill. 625, 643 (1893).

The five "distinctive characteristics" identified by the Korzen court are that charitable institutions:

- 1) have no capital stock or shareholders;
- 2) earn no profits or dividends, but rather, derive their funds mainly from public and private charity and hold such funds in trust for the objects and purposes expressed in their charters;
- 3) dispense charity to all who need and apply for it;

analyses of the charitable and religious exemptions were unpractical because the analysis required for one was so intertwined with that affecting the other. Novak, *supra*, at 26.

This approach creates confusion by blurring technical distinctions between the religious and charitable exemptions. Nevertheless, it is the current *modus operandi* under which our courts analyze the exempt status of religious publishing organizations such as applicant. As such, the doctrine of *stare decisis* requires that I adhere to this hybrid analysis when examining the present record.

Application of this approach requires comparison of the factual similarities and differences between this case and those cited above. Favorable comparisons include the facts that: (1) applicant publishes and distributes books and other materials that pertain to the Islamic faith; (2) many of these books are used in connection with the curriculum that applicant designs for and implements at Islamic schools; (3) the prices applicant charges for the publications it does sell barely cover its printing costs; (4) applicant's executive director, JOHN DOE, holds a doctorate in comparative religions and serves as an Imam in various Chicago-area mosques (Tr. pp. 47, 137); (5) applicant's curriculum director, JANE DOE, holds a master's degree and a PhD. in education-curriculum as well as a certificate of advanced study in child development. (Tr. p. 156).

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- 4) do not provide gain or profit in a private sense to any person connected with it; and,
 - 5) do 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.

Id.

These latter facts establish that this case is similar to Novak, supra, in that applicant's executive and curriculum directors are duly qualified experts¹⁸ in the respective areas of religion and curriculum-child development. However, it must be emphasized that, this case is unlike Congregational Sunday School, supra and Novak, supra, because the applicant herein prefers to sell its books and does not give its publications away except on a "discretionary" basis.¹⁹ (Tr. pp. 93, 98-99, 142, Applicant's brief, p. 8). As such, its donations to the Skokie Public Library are best characterized as incidental acts of "charity" that are legally insufficient to sustain applicant's burden of proof.

The same may be said of the grants and scholarships that applicant awards to students in India. My analysis of applicant's financial structure, supra at p. 7, demonstrates that such grants and scholarships accounted for less than 1% of applicant's total expenditures during 1996. Consequently, the present matter parallels a line of decisions wherein exemptions were denied because the respective records lacked evidence of any "charitable" disbursements or supported a conclusion that such expenditures were non-existent or *de minimus*. Rogers Park Post No. 108 v. Brenza, 8 Ill.2d 286, 291 (1956); Morton Temple Association v. Department of Revenue, 158 Ill. App.3d 794 (3rd Dist. 1987); Albion Ruritan Club v. Department of Revenue, 209 Ill. App.3d 914, 919 (5th Dist. 1991); Auburn Park Lodge No. 789 v. Department of Revenue, 95 L. 50343 (Circuit Court of Cook County, September 6, 1996).

18. For analysis of the legal requirements for establishing the qualifications and competency of experts giving opinion testimony *see*, Taylor v. The Carborundum Co, 107 Ill. App.2d 12 (1st Dist. 1969); People v. Johnson, 145 Ill. App.3d 626 (1st Dist. 1986).

19. Appellant in Congregational Sunday School provided materials *gratis* or adjusted the price according to the school's ability to pay. *See, supra* at pp. 16-17. Appellee in Novak "often" donated its course and text materials to libraries and mission schools free of charge. *See, supra* at p. 19.

This case is also factually distinguishable from Novak, *supra*, in that applicant herein was *not* organized by religiously-oriented Bible colleges for purposes of upgrading the quality of education at member institutions. (See *supra*, at pp. 18-19). Although the efforts of applicant's experts may raise the caliber of instruction at Islamic schools, the record fails to indicate that applicant was formed in response to the needs of these religiously-based institutions. Therefore, applicant has failed to prove that it is not the type of entrepreneurial entity suggested to be non-exempt under the hybrid analysis set forth in Congregational Sunday School, *supra* and Novak, *supra*.

Furthermore, applicant did not submit any evidence establishing the exempt status of any of the Islamic schools that it services. With one exception, applicant also did not establish that it played a role in helping such institutions to become accredited. This exception is, under the above analysis, clearly incidental to applicant's primary function. Even if it were not, the evidence fails to establish that applicant *itself* is an accredited school or responsible for issuing accreditation to Islamic schools.

This latter consideration serves to distinguish the present case from Association of American Medical Colleges v. Lorenz, 17 Ill. 2nd 125 (1959), (hereinafter "Lorenz"), wherein appellant joined in the accreditation of all medical schools in the United States via its inspection and liaison committee. Appellant also performed a number of other functions which the court noted would themselves qualify for exemption if performed separately by member institutions. Lorenz, *supra* at 129. These functions included, *inter alia*: (1) publishing a journal and a directory showing admission requirements to member medical schools; (2) compiling student information designed to assist medical schools in developing programs of instruction; (3) sponsoring admission tests and teaching institutes; (4) evaluating students intellectual and

personality characteristics as well as their relationship to scholastic and professional performance; (5) maintaining a library of motion picture films for use by medical schools; (6) carrying out various placement functions and (7) appraising curricula of member medical schools and colleges.

Applicant argues that its curriculum development functions mirror those of the appellant in Lorenz. However, this argument fails to recognize that such functions were but one of many services which the Lorenz appellant rendered to its member institutions. Although cursory review of the record might lead one to argue that this applicant provides similar additional services, the following analysis shall demonstrate the presence of numerous distinguishing factors.

The library that applicant operates is, unlike that in Lorenz, used primarily by its own staff. Thus, any public or "member institution" uses must be considered incidental. Moreover, while applicant does conduct various seminars, workshops and instructional programs on religious and other topics, (including its curriculum), such programs are likewise incidental to applicant's publishing enterprises. Even if they were not, the record fails to disclose that such programs provided anything but short-term lessons. Consequently, it is unlikely that any instruction taking place therein was included in a prescribed course of study. See, American College of Chest Physicians v. Department of Revenue, 202 Ill. App.3d 59 (1st Dist. 1990); Winona School of Professional Photography v. Department of Revenue, 211 Ill. App.3d 565, 570 (1st Dist. 1991).

It also bears noting that applicant does not sponsor any admission tests or perform any placement functions in Islamic schools. Nor does it evaluate students' scholastic abilities for any

of the Islamic schools that might be considered "member institutions." Based on these and all the above-stated distinctions, I conclude that applicant's reliance on Lorenz is misplaced.

Taken as a whole, the preceding analysis demonstrates that this case is factually and legally distinguishable from Congregational Sunday School, *supra*, Inter-Varsity Christian Fellowship, *supra*, Novak, *supra* and Lorenz, *supra*. Such distinctions raise enough doubts, all of which must be resolved in favor of taxation, (*see, supra*, p. 14) as to warrant the overall conclusion that applicant does not qualify for exemption under the hybrid analysis set forth in Congregational Sunday School and Novak.

These distinctions also demonstrate that applicant is not similarly situated to any of the entities found to be exempt in Congregational Sunday School, *supra*, Inter-Varsity Christian Fellowship, *supra*, Novak, *supra* and Lorenz, *supra*. Therefore, denying its request for exempt status does not violate applicant's equal protection rights. Board of Certified Safety Professionals v. Johnson, 112 Ill.2d 542, 548 (1986). For this and all the aforementioned reasons, applicant should not be issued an exemption number exempting it from Use and related taxes pursuant to 35 ILCS 105/3-5(4).

WHEREFORE, for the reasons set forth above, it is my recommendation that the Department's tentative denial of exemption should be affirmed and finalized as issued.

September 1, 1998

Date

Alan I. Marcus
Administrative Law Judge