

ST 08-17

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**

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

v.

**ABC ADULT DAY CENTER,
,
TAXPAYER**

No: 08 ST 0000

Sales Tax Exemption

**Kenneth J. Galvin
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Ms. Jane Doe, on behalf of ABC Adult Day Center; Mr. John Alshuler, Special Assistant Attorney General, on behalf of The Department of Revenue of the State of Illinois.

SYNOPSIS: ABC Adult Day Center (hereinafter “ABC”) sought an exemption from the imposition of tax under the Illinois Retailer’s Occupation Tax Act (35 **ILCS** 120/1 *et seq.*) (“ROTA” or “ROT”) and the Illinois Use Tax Act (35 **ILCS** 105/1 *et seq.*) (“UTA” or “UT”) as an entity organized and operated exclusively for charitable purposes. 35 **ILCS** 120/2-5; 105/3-5. The Department of Revenue denied ABC’s request twice, with ABC formally protesting and requesting a hearing following the issuance of the Second Denial of Sales Tax Exemption on January 24, 2008. Dept. Ex. No. 2.

An evidentiary hearing was held in this matter on July 17, 2008 with testimony from Ms. Jane Doe, Executive Director of ABC, and XXXX and XXXX, clients of ABC.

The sole issue to be determined at the hearing was whether ABC 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 second 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 January 24, 2008. Tr. pp. 8-9; Dept. Ex. No. 2.

CONCLUSIONS OF LAW:

An examination of the record establishes that ABC 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 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 caused to be admitted into evidence a brochure entitled "ABC Adult Day Care & Counseling Center." This brochure lists the following services provided by ABC: monitoring of clients; socialization with other adults in a positive stimulating group setting; leisure time activities (music, art, crafts, current events and games); hot, nutritious meals and snacks; routine health screening (blood pressure, temperature and pulse); health education (asthma, heart disease, stroke, nutrition, etc.); support group for diabetics; transitional housing; caseworker services (assisting clients with paperwork, i.e., applying for social security or public aid, scheduling & transporting clients to doctor visits, pharmacy, etc.); and transportation to and from client's home to [ABC] and back. Tr. pp. 17-18; Taxpayer's Ex. No. 4. The brochure states that ABC serves a population "ages 18 - 60+" "living alone or with family members, and others who have become limited by physical, mental or social challenges" and "veterans recently discharged from the service & need counseling and/or job training skills (sic)." Tr. pp. 17-18; Taxpayer's Ex. No. 4. While it is apparent that ABC responds to the needs of the community, the evidence and testimony presented at the hearing were not sufficient for me to conclude

that ABC 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's unaudited "Statement of Activities" for the year ended December 31, 2007, was admitted into evidence at the hearing. Dept. Ex. No. 3. The statement shows "Service Revenue" of \$90,902. Ms. Doe testified that the "Service Revenue" was from the Illinois Department of Human Services ("IDHS"), which pays the Center \$7.12/hour. Tr. pp. 12, 26. The Statement of Activities shows an "Administrative Expense" of \$30,121. Ms. Doe described this expense as follows: "This administrative [expense] here would be a fee that I would be paid if I was getting – working for an organization from somewhere else. I'm not getting the fee because we don't have this salary." Tr. p. 28. She stated further: "You know, this is not at all accurate. Under administrative fees, I listed a salary for me that I would be getting if I worked for an organization, an adult day care center of that sort, which I was not receiving. So this is not all accurate." Tr. p. 29.

It is unclear why ABC's Statement of Activities would include a salary for Ms. Doe that she argues she did not receive. Ms. Doe testified further that her salary from ABC is "probably like at least eight to ten thousand less" than what is shown in the statement. Tr. p. 30. The Statement of Activities shows an "Excess of Revenue Over Expenditures" in the amount of \$11,668. If Ms. Doe's salary in the statement is overstated by eight to ten thousand dollars, then ABC had an excess of revenue over expenses of \$11,668 plus eight to ten thousand dollars. Ms. Doe was asked if the excess of revenue over expenses "must be something like \$19,000." She responded "exactly, correct" and

that other than the Administrative Expense, the statement was an “accurate, correct” document. Tr. pp. 30-31.

I am unable to conclude that the Statement of Activities is an “accurate, correct” document. In addition, I am unable to conclude that ABC derives its funding from public and private charity. All of ABC’s funding is from IDHS, but ABC’s contract with IDHS was not admitted into evidence. I am unable to determine, from the record, the nature of IDHS’s funding of ABC. Without IDHS’s contract in evidence, I am unable to determine whether ABC reduces a burden on government.

No charter or articles of incorporation or bylaws were admitted into evidence on behalf of ABC. Without these documents, I am unable to conclude that the funds provided by IDHS are held in trust for charitable purposes. No written statement of ABC’s charitable purpose was offered into evidence. The confusing testimony on Ms. Doe’ salary and the inaccuracies in the Statement of Activities do not allow me to conclude that ABC does not provide gain or profit in a private sense to Ms. Doe.

Two other factors to be considered in assessing whether ABC is a charitable organization is whether charity is dispensed to all who need and apply for it and whether ABC 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 has met these guidelines. No operating manuals or bylaws were admitted into evidence. I am unable to determine what criteria ABC uses for assessing whether a person should be afforded charitable care, how many people received charitable care and how many people applied for charitable care and were denied, if any.

The only evidence caused to be admitted by ABC in support of its case, beside the brochure discussed above, were three letters of support from people who have used ABC's services or have recommended the use of their services (App. Ex. Nos. 1, 2 and 3) and two "client sign-in/sign-out sheets," both sheets dated July 16, 2008. App. Ex. No 5. One sign-in/sign-out sheet is headed "ABC ENTERPRISES INC, ABC Adult Day Care Center" and the other is headed "Division of Rehabilitation Services." There was no testimony as to the relationship between "ABC Enterprises, Inc." and ABC and "Division of Rehabilitation Services" and ABC. There was no testimony or documentary evidence presented showing that ABC is a not-for profit corporation. Ms. Doe did testify that she hoped that she "can get the not-for-profit thing so [she] can continue to buy food and pay for transportation, get a van – a bigger van to help transport people in the community." Tr. pp. 39-40.

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 second denial of ABC's request for an ROT exemption is presumed to be correct, and ABC 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 (2nd 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 (4th Dist. 1990). The evidence and testimony presented at the hearing indicate that ABC may perform some commendable services for the community. However, the inaccurate Statement of Activities and the absence of documentary evidence in this case force me to

conclude that ABC has not proven, by clear and convincing evidence, that it is a charitable institution in accordance with the guidelines of Methodist Old Peoples Home. For the above stated reasons, I recommend that the Department's determination denying the applicant a sales tax identification number be affirmed

ENTER:

Kenneth J. Galvin

September 5, 2008