

ST 17-02

Type of Tax: Sales Tax

Issues: Exemption from Tax (Charitable and other Exempt Taxpayer)

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

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

v.

ABC ENTERPRISES, INC.

Taxpayer

Docket No. XXX-ST-XXX

Claim for Exemption Number

RECOMMENDATION FOR DISPOSITION

Appearances: Robin Gill, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Jean Teasse, *pro se*, for ABC ENTERPRISES, INC.

Synopsis:

ABC ENTERPRISES, INC. (“taxpayer”) sent a request to the Department of Revenue (“Department”) for an exemption identification number in order to purchase tangible personal property at retail free from the imposition of retailers’ occupation and use taxes. The Department denied the request, and the taxpayer timely protested the denial. The parties waived their right to an evidentiary hearing and asked that the matter be resolved based on the stipulated facts and the

attached exhibits. Both parties filed arguments in support of their positions. The issue presented is whether the taxpayer is organized and operated exclusively for charitable or educational purposes under section 3-5(4) of the Use Tax Act (35 ILCS 105/3-5(4)) and section 2-5(11) of the Retailers' Occupation Tax Act (35 ILCS 120/2-5(11)). The taxpayer is a membership organization that operates a competitive, full-contact women's flat track roller derby team. The Department contends that the taxpayer is not organized and operated exclusively for charitable or educational purposes. After reviewing the record, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. The taxpayer is an Illinois not-for-profit corporation that was organized in 2011.
(Dept. Ex. #1, pp. 5-6)
2. The taxpayer was organized to create a competitive, full-contact women's flat track roller derby team that operates under the official rules and sanctions of the Women's Flat Track Roller Derby Association (WFTDA). (Dept. Ex. #1, p. 17)
3. The taxpayer's articles of incorporation provide the following purpose statement:

The purpose of the corporation is to provide an opportunity for women to learn, compete, and promote women's flat track roller derby in XXXXX Illinois. This all-female athletic team is focused on promoting health, wellness, fitness, training, competition, self-growth, community outreach, and sisterhood. We place a high value on personal character, community involvement, and dedication to our sport. The [taxpayer] does not discriminate based on race, sexual orientation, religion, political background, or personal views. The corporation is organized exclusively for charitable and educational purposes and to foster national amateur sports competition under section 501(c)(3) of the Internal Revenue Code. Upon dissolution of this league, assets shall be distributed for one or more exempt purposes as defined by section

501(c)(3) of the Internal Revenue Code. (Dept. Ex. #1, p. 31)

4. The bylaws provide that all members of the taxpayer must, among other things, pay dues in the amount determined by the Board of Directors.¹ (Dept. Ex. #1, p. 7)
5. If a member fails to pay dues, she may be assigned a status of bad standing, probation, and/or suspension. (Dept. Ex. #1, p. 7)
6. The taxpayer's revenue and expense statement for the year ending December 31, 2015 provides as follows:

Revenues	
Sponsorship Revenues	\$X,XXX
Program Service Revenues:	
Training Revenue	X,XXX
Competitive Event Revenues	XX,XXX
Fundraising	<u>XXX</u>
Total Revenue	XX,XXX
Expenses	
Program Expenses:	
Training Expenses	X,XXX
Competitive Event Expenses	XX,XXX
Supporting Services Expenses:	
Management and General	<u>X,XXX</u>
Total Expenses	XX,XXX
Change in Net Assets	(X,XXX)

(Dept. Ex. #1, p. 25)

7. The Sponsorship Revenues for the year ending December 31, 2015 were from the following:

Corporation X	\$X,XXX
XXX Sponsorship	XXX
A Business	XXX
B Business	X,XXX
C Business	X,XXX
Unlabeled	<u>XXX</u>

¹ The amount of the dues was not provided.

Total \$X,XXX² (Dept. Ex. #1, p. 20)

8. The Competitive Event Expenses for the year ending December 31, 2015 were the following:

Rent	\$X,XXX
Travel	X,XXX
Supplies and Materials	X,XXX
Advertising	XXX
Taxes	XXX
Uniforms	X,XXX
Donations to other Charities	<u>X,XXX</u>
Total	\$XX,XXX (Dept. Ex. #1, p. 26)

9. The taxpayer is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code pursuant to a determination made by the IRS on May 28, 2015. (Dept. Ex. #1, pp. 14-15)

CONCLUSIONS OF LAW:

The Use Tax Act (“Act”) (35 ILCS 105/1 *et seq.*) imposes a tax upon the privilege of using in Illinois tangible personal property purchased at retail from a retailer. 35 ILCS 105/3. Section 3-5(4) of the Act provides a list of tangible personal property that is exempt from the tax, and includes the following:

Personal property purchased by a governmental body, by a corporation, society, association, foundation, or institution organized and operated exclusively for charitable, religious, or educational purposes On and after July 1, 1987, however, no entity otherwise eligible for this exemption shall make tax-free purchases unless it has an active exemption identification number issued by the Department. 35 ILCS 105/3-5(4).

Section 2-5(11) of the Retailers’ Occupation Tax Act (“ROTA”) (35 ILCS 120/1 *et seq.*) contains a similar provision for personal property sold to these organizations. See 35 ILCS 120/2-5(11). Therefore, in order to receive the exemption identification number, the taxpayer must be

² The difference between this amount and the \$6,105 on the Revenue and Expense Statement was not explained.

“organized and operated” exclusively for charitable or educational purposes. See also 86 Ill. Admin. Code §130.2005(j)(3). The term “exclusively” is not interpreted literally to mean the entity’s sole purpose; it is construed to mean the primary purpose. Yale Club of Chicago v. Department of Revenue, 214 Ill. App. 3d 468, 473 (1st Dist. 1991); Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430, 436 (1st Dist. 1987). Whether an institution has been organized and is operating exclusively for an exempt purpose is determined from its charter, bylaws and the actual facts relating to its method of operation. Du Page County Board of Review v. Joint Commission on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461, 466 (2nd Dist. 1995).

In order to determine whether the taxpayer is organized and operated exclusively for charitable purposes, the following factors are considered: (1) whether the benefits derived are for an indefinite number of people, persuading them to an educational or religious conviction, for their general welfare or in some way reducing the burdens of government; (2) whether the organization has no capital, capital stock or shareholders, earns no profits or dividends, but rather derives its funds mainly from public and private charity and holds them in trust for the objects and purposes expressed in its charter; (3) whether the organization dispenses charity to all who need and apply for it; (4) whether the organization does not provide gain or profit in a private sense to any person connected with it; (5) whether 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; and (6) whether the organization is actually and factually operated primarily for charitable purposes. Wyndemere Retirement Community v. Department of Revenue, 274 Ill. App. 3d 455, 459 (2nd Dist. 1995) (citing Methodist Old Peoples Home v. Korzen, 39 Ill. 2d 139, 156-

157 (1968)).³ These factors are balanced with an overall focus on whether and how the organization serves the public interest and lessens the State’s burden. Du Page County Board of Review, at 466.

In order to determine whether the taxpayer is organized and operated exclusively for educational purposes, section 2c of the Act provides, in part, as follows:

For purposes of this Act, a corporation, limited liability company, society, association, foundation or institution organized and operated 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 tax-supported schools; 35 ILCS 105/2c.

The phrase “educational purposes” is construed as meaning “school purposes” as that phrase has been interpreted by the Supreme Court. 86 Ill. Admin. Code §130.2005(1); Rogy’s New Generation, Inc. v. Department of Revenue, 318 Ill. App. 3d 765, 772 (1st Dist. 2000). According to the Supreme Court, in order for an institution to operate for school purposes, its course of study must: (1) fit into the general scheme of education founded by the State and supported by public taxation, and (2) substantially lessen what would otherwise be a governmental function and obligation. Coyne Electrical School v. Paschen, 12 Ill. 2d 387, 392-93 (1957).

The taxpayer has the burden of proving by clear and convincing evidence that it is entitled to the exemption. Rogy’s New Generation, at 771; Wyndemere, *supra*; Gas Research Institute, *supra*. It is well-settled that tax exemption provisions are strictly construed in favor of taxation. *Id.*; Heller v. Fergus Ford, Inc., 59 Ill. 2d 576, 579 (1975). All facts are construed and all doubts

³ Because these factors are also used to analyze charitable exemptions from property taxes, cases involving property taxes will also be cited. See Wyndemere, *supra*.

are resolved in favor of taxation. *Id.* To prove its case, a taxpayer must present more than its testimony denying the Department's determination. Sprague v. Johnson, 195 Ill. App. 3d 798, 804 (4th Dist. 1990); Balla v. Department of Revenue, 96 Ill. App. 3d 293, 296 (1st Dist. 1981). The taxpayer must present sufficient documentary evidence to support its claim. *Id.*

The taxpayer argues that it is organized for three main purposes: charitable, educational, and athletic. The taxpayer claims that the primary purpose is to offer an opportunity to promote competition and self-growth for women while providing support for the local community. The taxpayer contends that it is engaged in educational outreach: in addition to physical education training, it administers training and written testing on the rules of Flat Track Roller Derby. The taxpayer provides first aid and concussion training, and the taxpayer partners with elementary schools to educate children on the sport. The taxpayer notes that it received \$X,XXX in cash sponsorship revenue in 2015, and the taxpayer gave \$X,XXX to charity. The taxpayer claims that it donates a minimum of \$XXX from each bout plus a portion of the gross ticket sales.

The Department argues that the taxpayer does not benefit an indefinite number of people because it mainly serves its own members. The Department contends that although the taxpayer gives money to charities, this is incidental to the main purpose of the organization, which is to promote health, training, competition, self-growth, community involvement and dedication to the sport. The Department believes that the taxpayer's purpose is not primarily a charitable endeavor. The Department argues that the taxpayer's funds are not derived mainly from public or private charity because most of the income is from organizational events. The Department also claims that the taxpayer does not reduce any governmental burden.

With respect to the charitable exemption, the taxpayer has not met most of the requirements to show that it is organized and operated primarily for charitable purposes. The first

factor has not been met because, as the Department has indicated, the taxpayer does not primarily benefit an indefinite number of people. The taxpayer is a flat track roller derby team, which primarily benefits its members. The second factor also has not been met because the taxpayer does not derive its funds mainly from charity. Although the taxpayer receives some income from sponsorships, the majority of its income is from competitive events and not from public or private charity.

In addition, the evidence does not indicate that the taxpayer is primarily operated for charitable purposes. The taxpayer admitted that it is organized for three main purposes: charitable, educational, and athletic. Its articles of incorporation state that its purpose is to give women an opportunity to learn, compete, and promote women's flat track roller derby, which is primarily an athletic purpose rather than a charitable or educational purpose. Furthermore, considering the amount of charity that the taxpayer provides, the taxpayer's operations do not rise to the level of being primarily charitable. In Provena Covenant Medical Center v. Department of Revenue, 384 Ill. App. 3d 734 (4th Dist. 2008), *aff'd*, 236 Ill. 2d 368 (2010), the court stated that charity is a "gift;" it is an act of kindness or benevolence. *Id.* at 750. The court added that charity is not merely helpfulness, but generosity; to be charitable, an organization must give liberally. *Id.* The taxpayer gave \$X,XXX to charity when its income was \$XX,XXX. Its charitable giving was approximately 15% of its income, which is not a large percentage and does not constitute giving liberally.

The taxpayer also does not extend charity to its own members. Although the record does not include the amount of the dues and the income statement does not include income from dues, all members must pay dues, and the failure to pay the dues results in a status less than Good Standing. Charging fees does not automatically disqualify an organization as charitable as long

as it furnishes its services to those who are unable to pay. Small v. Pangle, 60 Ill. 2d 510, 515-516 (1975). There is no indication that the taxpayer waives dues for those who are unable to pay. The evidence does not support a finding that the taxpayer is primarily charitable.

The evidence also does not support a finding that the taxpayer is organized and operated primarily for educational purposes. In order for an institution to operate for school purposes, it must have a course of study that (1) fits into the general scheme of education founded by the State and supported by public taxation, and (2) substantially lessens what would otherwise be a governmental function and obligation. Coyne Electrical School, *supra*. Applying this two-part test, the appellate court in Rogy's New Generation, *supra*, found that an organization that operated a daycare center did not qualify for an educational purposes exemption from the retailers' occupation and use taxes. The court stated that the fundamental flaw in the taxpayer's case was that the State of Illinois does not provide, nor mandate, education for children under the age of 5. *Id.* at 772. Similarly, the State of Illinois does not provide, nor mandate, the type of education that the taxpayer provides. The taxpayer's educational activities do not fit into the general scheme of education founded by the State and supported by public taxation. The educational exemption is, therefore, not warranted.

Recommendation:

For the foregoing reasons, it is recommended that the taxpayer's request for an exemption identification number be denied.

Enter: December 16, 2016

Linda Olivero
Administrative Law Judge