

ST 17-04

Tax type: Sales Tax

Tax Issue: Exemption From Tax (Charitable or Other Exempt Types)

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

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

v.

**ABC ASSOCIATION
Taxpayer**

Docket No. [REDACTED]
Letter ID: L0123456789
Claim for Exemption Number

RECOMMENDATION FOR DISPOSITION

Appearances: Robin Gill, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; John Doe, *pro se*, for ABC Association

Synopsis:

ABC Association (“taxpayer” or “ABCA”) 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. The Department filed an argument in support of its position. 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 administers programs to encourage entrepreneurship and leadership in the area. 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 a not-for-profit corporation that was organized in Illinois on January 11, 1999. (Dept. Ex. #1, p. 9)
2. According to the articles of incorporation, the organization's purpose is the following: "Promoting the development, establishment or expansion of industries." (Dept. Ex. #1, p. 10)
3. The taxpayer's by-laws indicate that the purpose of the organization is as follows:

To conduct its affairs, carry on its operations and to promote the improvement, diversification and growth of the economic base of the Anywhere County area by:

Assisting and retaining existing commerce and industry and the preservation of employment opportunities incident to existing commerce and industry; and

Recruiting and promoting the establishment of new commerce and industry and the creation of employment opportunities incident to new commerce and industry.

To purchase, take, receive, lease, take by gift, devise or bequest, or otherwise acquire, and to own, hold, use and otherwise deal in and with any real or personal property, or any interest therein. (Dept. Ex. #1, p. 17)

4. The taxpayer's new Mission Statement is the following: "The ABCA is here to help the people of Anywhere County thrive." (Dept. Ex. #1, p. 4)

5. According to the taxpayer's brochure, the taxpayer's "primary focus is to work with existing business and industry in the interest of retention and expansion and the recruitment and creation of new business and industry within the community."
(Dept. Ex. #1, p. 31)
6. The taxpayer administers a \$XXX million low-interest Revolving Loan Fund for Anywhere County. The money is derived from state grants and is used to help new business start-ups and expansions of existing business and industry. The taxpayer partners with area banks and the Small Business Development Association to help clients with financial data, business plans and other needs for development of the business. (Dept. Ex. #1, p. 31)
7. According to the taxpayer's brochure, the Loan Criteria is the following:
 - Loan is based on job creation, the fund is limited to \$XXX per job created
 - There is a minimum loan of \$XXX and maximum of \$XXX
 - The fund is limited to 1/3 of a total project amount, with the other 2/3 documented by a financial source
 - Life Insurance on loan requested
 - 2 years prior IRS statement required
 - Personal and business financial statements
 - Interest rate and term are flexible and negotiable, final rate is determined by the committee (2% - 5%) (Dept. Ex. #1, p. 31)
8. The taxpayer does not hold the capital for the loan program; the capital that funds the program is held by Anywhere County. The taxpayer acts as the administrator and specializes in getting the funds to individuals who would otherwise not have access to the necessary capital to develop new opportunities in the community.
(Dept. Ex. #1, p. 3)
9. The taxpayer also administers a program called Program 1, which is a year-long leadership institute for 15 local professionals. The participants are people who

are typically under the age of 45, and they meet to learn new leadership skills and to identify the needs in the communities to which they can apply their unique professional and personal skills. (Dept. Ex. #1, pp. 4, 6)

10. In order to complete Program 1, the participants must take part in a charitable activity. Some past examples include the establishment of a forest preserve and the establishment of a diversity education curriculum for local schools. (Dept. Ex. #1, p. 4)

11. The taxpayer spends approximately 95% of its time administering the low-interest loan program and Program 1. (Dept. Ex. #1, p. 4)

12. The taxpayer's other current projects include the following:

Program 2 – a conference for local churches, charities, and other non-profits designed to provide cutting edge best practices on non-profit management.

Program 3 – a one-year program of study created in partnership with Lincoln Trail College designed to equip local potential entrepreneurs with the skills needed to launch small businesses in Anywhere County.

Program 4 – a committee facilitated by the taxpayer to bring together leaders of local historical, cultural and recreational assets to promote inter-county and intra-county tourism to enhance those organizations and provide a sustainable future for those institutions.

Program 5 – a comprehensive reimagining of the industrial, vocational and technical education opportunities available at both the secondary and tertiary level of education. The program features a reformulation of technical education in the high schools and college to ensure that the students receive a comprehensive education that puts them in the most competitive positions to meet the needs of the economy. (Dept. Ex. #1, p. 6)

13. The taxpayer's "Contribution Summary" for the period of December 1, 2015 through November 30, 2016 is the following:

City of Anywhere	XXXXXX
Anywhere County Board	XXXXXX
A Bank	XXXXXX

B Bank	XXXXXX
C Bank	XXXXXX
D Bank	XXXXXX
E Bank	XXXXXX
F Bank	XXXXXX
Lincolnland XXX	XXXXXX
XYZ	XXXXXX
Village of A	XXXXXX
Village of B	XXXXXX
Village of C	XXXXXX

Total \$ XXXXXX (Dept. Ex. #1, p. 8)

14. The taxpayer did not provide expenses relating to the period of December 1, 2015 through November 30, 2016.

15. The taxpayer’s financial statement for the period of December 2015 through April 2016 shows income from “Contributions” in the total amount of \$ XXXXXX, “Other Income” of \$ XXXXXX, and “Interest Income” of XXXXXX. The expenses and net income for this same time period are the following:

Filings and Recordings	
Communication	XXXXXX
Dues and Subscription	XXXXXX
Equipment Rental	XXXXXX
Insurance	XXXXXX
Marketing	XXXXXX
Miscellaneous	XXXXXX
Office Equipment	XXXXXX
Office Supplies	XXXXXX
Payroll Expenses	XXXXXX
Professional Fees	XXXXXX
Retention Expenses	XXXXXX
Search Expense	XXXXXX
Total Expense	XXXXXX
Net income	XXXXXX (Dept. Ex. #1, p.

28)

16. The taxpayer has no capital, capital stock, or shareholders. (Dept. Ex. #1, p. 9)

17. The taxpayer is exempt from federal income taxes under section 501(c)(3) of the Internal Revenue Code pursuant to a determination made by the IRS. (Dept. Ex. #1, pp. 13-16)

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 “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, 156-57 (1968)).¹ 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

¹ Because these factors are also used to analyze charitable exemptions from property taxes, cases involving property taxes will also be cited. See Wyndemere, *supra*.

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 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 its low-interest loan program is a charitable service. The taxpayer contends that the program is designed to make capital available to high-risk borrowers who have historically been the victims of “rural-redlining,” which is a practice by which banks and other traditional sources of capital determine that virtually all investments in rural areas are too high-risk to justify investment. According to the

taxpayer, this low-interest loan program takes the majority of its time. The taxpayer contends that the taxpayer essentially works as a sub-unit of the county government. The County Treasurer holds the funds, and the taxpayer does not derive any income from the program. The taxpayer believes that this program is analogous to a local housing authority, which is an exempt activity. The taxpayer argues that it is a program that exists to serve historically marginalized people by giving them access to a low-cost service in an effort to stabilize vulnerable communities.

The taxpayer states that the other program that it administers, Program 1, is a year-long academy in which people meet to learn new leadership skills and to identify the needs in the communities to which they can apply their skills. The taxpayer notes that in order to complete the program, the participants must take part in a charitable activity. According to the taxpayer, this program addresses the need for a generation of leaders in the community to eventually take over the many organizations that are being crippled by the “graying” of the population.

The taxpayer indicated that these two programs take up approximately 95% of its time. According to the taxpayer, it does “de minimus regional economic development functions” because there is no one else to do those things for the county. The taxpayer states that it exists to serve the people of Anywhere County.

The Department argues that although the taxpayer is organized for noble purposes and for the betterment of the community, the taxpayer is not organized for exclusively charitable or educational purposes. The Department states that the taxpayer works with Anywhere County and community leaders with the intention of benefiting the local community. The Department argues that the taxpayer does not serve or benefit an

indefinite number of people and mainly serves the business community in order to promote the local economy. The taxpayer provides educational opportunities to local people in Anywhere County through internal programs or through cooperative programs through the local school district. The Department notes that the primary activity for the taxpayer is the administration of a county low-interest loan program for local entrepreneurs. According to the Department, none of these activities are traditional charitable endeavors. The Department believes that the taxpayer does not have an established plan for dispensing charity and, therefore, has not made charity available to all who need it.

The Department contends that the taxpayer has provided little information concerning the selection of the individuals who participate in the taxpayer's programs or the amount of tuition that the taxpayer charges. The Department also contends that the taxpayer is not reducing any governmental burdens with its activities; the government is not burdened with providing any of the services that the taxpayer offers. The Department states that although there may be some charitable aspects to the taxpayer's activities, the primary function is to benefit the local economy, grow local business, and promote business leadership throughout the county. The Department contends that these are not charitable activities.

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. Having a 501(c)(3) exemption from income taxes is not determinative of whether a taxpayer is entitled to a charitable exemption from retailers' occupation and use taxes. Although the taxpayer has no capital, capital stock, or shareholders and derives most of

its income from contributions, the evidence does not support a finding that the taxpayer meets most of the other guidelines for determining whether it is organized and operated primarily for charitable purposes.

It is important to note that the taxpayer does not use the word “charity” in its purpose statements, and there is no reference in the statements to any type of charitable activity. The articles of incorporation state that the taxpayer’s purpose is the following: “Promoting the development, establishment or expansion of industries.” According to the bylaws, the taxpayer’s purpose is “to promote the improvement, diversification and growth of the economic base of the Anywhere County area.” This is to be done by retaining existing businesses and recruiting new ones. The Mission Statement is the following: “The ABCA is here to help the people of Anywhere County thrive.” All of these statements indicate that the taxpayer’s primary goal is to retain and expand existing businesses while also creating new ones. This goal is more analogous to the goal of a civic organization rather than a charitable one. Civic organizations do not qualify for an exemption from retailers’ occupation and use taxes. See 86 Ill. Admin. Code §130.2005(a).

The taxpayer admitted that the majority of its time is spent administering a low-interest loan program. As the Department indicated, this is not a traditional charitable endeavor. 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 provides loans to high-risk investors, but there is no “gift”

involved with the program. The taxpayer does not provide a “gift” to an indefinite number of people that would persuade them to an educational or religious conviction for their general welfare or in some way reduce the burdens of government.

The majority of the taxpayer’s time is spent administering a loan program that does not involve a “gift,” and the taxpayer’s expense statement supports a finding that the taxpayer does not provide “charity.” According to the taxpayer’s list of expenses, the taxpayer does not have an expense for charity. The evidence does not indicate any amount of charity that the taxpayer gives. As the Department indicated, it is unclear whether the taxpayer charges tuition for its classes, but the classes are not the primary activity of the taxpayer. The evidence simply does not support a finding that the taxpayer is primarily organized and operated for charitable purposes.

The taxpayer’s loan program appears to be administered like any other loan program. Although the taxpayer believes this is analogous to a local housing authority, the legislature has specifically granted a property tax exemption for housing authorities. See 35 ILCS 200/15-95. A similar statutory exemption has not been granted for low-interest loan programs, and under the case law, a low-interest loan program does not meet the guidelines for qualifying as a charitable endeavor.

The evidence also does not support a finding that the taxpayer is organized and operated primarily for educational purposes. As already indicated, the taxpayer’s educational activities are not its primary activity. In addition, in order for an organization 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.

The taxpayer undoubtedly provides an important service for the community. Promoting community development and a better quality of life certainly improves the well-being of society and is a noble endeavor. Pursuing a noble cause, however, does not necessarily warrant an exemption. See Coyne Electrical School, at 399; Rogers Park Post No. 108, American Legion v. Brenza, 8 Ill. 2d 286, 291 (1956); Turnverein Lincoln v. Board of Appeals of Cook County, 358 Ill. 135, 144-145 (1934).

In order to receive the exemption, the taxpayer must establish clearly and convincingly that it is organized and operated exclusively for charitable or educational purposes. As previously mentioned, exemption provisions are strictly construed, and all doubts must be resolved in favor of taxation. Eden Retirement Center, Inc., *supra*. Because the evidence presented falls short of showing clearly and convincingly that the taxpayer has met its burden of proof, the exemption must be denied.

Recommendation:

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

Enter: April 21, 2017

Linda Olivero
Administrative Law Judge