

ST 18 - 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
CHICAGO, ILLINOIS**

THE DEPARTMENT OF REVENUE OF THE STATE OF ILLINOIS)	XX-ST-XXX
)	Sales Tax Exemption
)	
v.)	
)	
ABC ASSOCIATION)	
)	Kelly K. Yi
Applicant)	Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

Appearances: Ms. Paula Hunter, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Mr. Stephen Sawyer of The Sawyer Law Office on behalf of *ABC Association*.

Synopsis:

On September 16, 2015, the Department of Revenue of the State of Illinois (“Department”) issued a “Denial of Sales Tax Exemption” to the *ABC Association* (“*ABCA*” or “Applicant”) denying its request for a sales exemption identification number so that it could purchase tangible personal property at retail free from the imposition of retailers’ occupation tax as set forth in 35 ILCS 105/1 *et seq.* Applicant protested the Department’s decision and requested an administrative hearing. A formal evidentiary hearing held on September 11, 2017, with testimony from Mr. *John Doe* (hereinafter “*Doe*”), Applicant’s President, Ms. *Jane Smith*, (hereinafter “*Smith*”), Director of the *DEF Center*, and a member of the Applicant’s Board of Directors, and *John Jones* (hereinafter “*Jones*”), Supervisor with *Anywhere County Services*, and Applicant’s Treasurer.

Following submission of all evidence and a careful review of the record, it is recommended that the Department's denial be affirmed. The following Findings of Fact and Conclusions of Law are made in support of this recommendation.

Findings of Fact:

1. The Department's case, inclusive of all jurisdictional elements, is established by the admission into evidence of the Department's denial of exemption dated September 16, 2015. Dept. Ex. 1.
2. Applicant was organized in 2013 as a not-for-profit corporation through the merger of the membership of the *GHI Association* and the *JKL Association* of Illinois. Tr. pp. 44, 56; App.'s Ex. A, C.
3. Applicant's mission is to promote *XYZ* (hereinafter "*XYZ*") in Illinois by providing education, assistance, training and development through collaboration of behavioral health and justice systems. Tr. p. 46; App.'s Ex. A, J.
4. Applicant's main activity is holding an annual training conference where it provides education, assistance, and training to its members. The annual conference consists of a series of high-quality educational/training seminars and presentations by state and nationally recognized *XYZ* practitioners and experts. Tr. pp. 47, 49; App.'s Ex. A, E, J-L.
5. Applicant's amended bylaws effective March 2016 reflect that it is organized for charitable and education purposes including: (1) the education and training of judges, attorneys, mental health and substance abuse treatment providers, probation officers, law enforcement officers and others engaged in the operation of *XYZ*; (2) improved ways to work with people with substance use and/or mental health disorders who are involved with the criminal justice system; and (3) the safety of the public through

activities which promote the implementation and enhanced effectiveness of Illinois XYZ in promoting and optimizing conditions for recovery from such disorders and development of functionality and law-abiding behavior. App.'s Ex. E.

6. All of Applicant's income comes from its annual conference. Attendees are charged \$150 for a 1½ day conference. The conference fee includes a \$30 annual membership dues, meaning every conference attendee is a dues-paying member. Tr. pp. 45, 48; App.'s Ex. A, E.
7. None of Applicant's income inures to the benefit of any person associated with it, and with exception to registration fees, board liability insurance premiums, and tax preparation fees, all income goes toward for purposes of providing the annual conference to be offered the following year. App.'s Ex. E.
8. Applicant has no capital structure or capital stock, nor does it have any provision for disbursing dividends or other profits. Tr. p. 44; App.'s Ex. E.
9. Applicant's Board of Directors are unpaid; they consist of someone from every discipline in the field and various XYZ, and they meet quarterly to discuss changes in the law, research, and best practices which they then take to its membership either through its website or annual conference. Tr. p. 45; App.'s Ex. A.
10. Applicant did not submit a financial statement but its expenses consist of cost for the conference, accountants, contract with an agency to put on the conference, and for a retreat where its executive committee is elected. App.'s Ex. A.
11. Applicant has one class of membership and any person dedicated to the purposes of the Applicant is eligible for membership upon approval of the Board of Directors and timely payment of dues and fees. App.'s Ex. D.

12. Termination of membership occurs, among several factors, for a failure of the member to pay dues, fees, or assessments within one month after they become due and payable. App.'s Ex. D.
13. According to the by-laws, upon request, its board may on a case- by-case basis waive or reduce membership dues, fees, and assessments based on financial hardship. Tr. pp. 56-57; App.'s Ex. D.
14. *Doe*, a circuit court judge in *Anywhere* County, started the first *101* in 1991 and a *102* in 1998. Tr. p. 14.
15. *Doe* also started a *103* in *Anywhere* County that ran for 2½ years. Tr. p. 15.
16. *XYZs* are called *104*, where they serve a specialized group of individuals with long-term felony convictions, substance abuse and/or mental health problems. Tr. pp.15-16.
17. *XYZs* are volunteer programs; once a criminal defendant asks to be accepted, a risk and needs assessment is conducted, and only those in the target population are accepted. Tr. p. 20.
18. There is a post-adjudicatory or pre-adjudicatory and a combination courts. In pre-adjudicatory, if a participant successfully completes one of these courts, the case might be dismissed or they're given a lessor disposition. In a post- adjudicatory, where they plead guilty to the offense, and the part of their sentence is to be on *102* or *104* probation. Tr. p. 21.
19. *XYZs* focus on the judges talking to participants, really getting to know them, and there is much collaboration among professionals in the field including judges, prosecutors, defense attorneys, probation officers, clinicians, substance and mental health case managers, etc. Tr. pp. 28-29, 31.

20. When the XYZ began, which were then separately called *101*, *102*, and *103*, there were no formal training. In 2000, the *GHI Association* hosted its first annual conference. About ten years later, the *JKL Associaion* began holding annual conferences. Tr. p. 32.
21. Prior to these conferences, the professionals in the field were not trained to collaborate with each other to effectively work as a team. Tr. pp. 32-33.
22. As of November 2015, XYZs must be certified by standards promulgated by Illinois Supreme Court. Tr. p. 18-19.
23. *Doe* served on the committee in the formulation of the Illinois Supreme Court standards. Tr. pp. 34-35.
24. The standards require policies and procedures handbook, basic team members to be formed, and a target population to be served, and mandate training on current law and research on best practices and participation in interdisciplinary education for XYZ professionals. Tr. pp. 35-37; App.'s Ex. H.
25. XYZ began with federal funding. In Illinois, despite a huge support legislatively for training team members, there is no funding for the program. Tr. pp. 37-38; App.'s Ex. H.
26. *Doe* enumerated a multitude of benefits of XYZ: reduction of recidivism, increase in cost savings, as it is 4 times costlier to incarcerate an inmate annually than to provide years of treatment, keeping families together helps the children, participants get jobs and volunteer in the community, and less destruction of property. Tr. pp. 39-43, 57; App.'s Ex. I, J.
27. The benefit of training Applicant's members is that as they know their jobs better, the graduation rates of XYZ participants go up. Tr. p. 47; App.'s Ex. M.

28. *Doe* explained that as the national conference is much costlier to attend and attendees work for agencies that are funded by the government with limited funds, Applicant's conference is the only option for training people have. Tr. p. 49.
29. Approximately 525 people attended Applicant's 2016 conference. Tr. p. 50.
30. The breakdown of cost of the conference is speaker fees, deposits for hotel rooms, conference rooms, hotel meals, equipment rental at the hotel, and printing costs. Tr. pp. 50-51.
31. *Smith* stated that Applicant not only offers Illinois Supreme Court mandated training but serves as a resource for its membership, the Court, and the public with any questions about *XYZ*. Tr. pp. 63-64.
32. *Smith* stated that *XYZ* receives public funding through *105* and uses the funds to pay for their team members to attend Applicant's conference. Tr. pp. 66-67.
33. During the period of January 2013-November 2016, *XYZs* have produced over 2,200 graduates statewide. App.'s Ex. M.
34. Applicant's initial funding of about \$XX,XXX came from a combination two dissolving entities, the *JKL Association* and the *GHI Association*, which merged as Applicant. Tr. pp. 72-73.

Conclusions of Law:

The Use Tax 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 of the Act provides a list of tangible personal property that is exempt from tax, and includes the following: "(4) 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 or 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 (35 ILCS 120/1 *et seq.*) contains a similar provision. (See 35 ILCS 120/2-5(11)).

Applicant has requested an exemption identification number pursuant to these provisions, which the Department has denied on the basis that it did not demonstrate that it operates exclusively for charitable purposes. Dept. Ex. No. 1. The Department’s denial of an applicant’s claim for an exemption identification number is presumed to be correct, and the applicant has the burden of clearly and conclusively proving its entitlement to the exemption. *See Wyndemere Retirement Community v. Department of Revenue*, 274 Ill. App. 3d 455 (2nd Dist. 1985). To prove its case, an applicant must present more than just testimony denying the Department’s determination. *Sprague v. Johnson*, 195 Ill. App. 3d 798 (4th Dist. 1990). Rather, the applicant must present sufficient documentary evidence to support its claim. *Id.*

It is well established in Illinois that there is a presumption against exemption and that therefore, “exemptions are to be strictly construed” with any doubts concerning the applicability of the exemptions “resolved in favor of taxation.” *Van’s Material Co. Inc. v. Department of Revenue*, 131 Ill. 2d 196 (1989). The applicant bears the burden of proving “by clear and convincing” evidence that the exemption applies. *Evangelical Hospitals Corp. v. Department of Revenue*, 223 Ill. App. 3d 225 (2nd Dist. 1991).

An examination of the record establishes that Applicant has not demonstrated, by the presentation of exhibits, evidence sufficient to warrant an exemption from sales tax as

an association organized exclusively for charitable purposes. Accordingly, under the reasoning given below, the determination by the Department denying Applicant a sales tax exemption number should be affirmed. In support thereof, I make the following conclusions:

In Methodist Old Peoples Home v. Korzen, 39 Ill. 2d 149 (1968) (hereinafter “Korzen”), the Illinois Supreme Court outlined several factors to be considered in determining whether an entity is 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; and (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. Korzen at 157. These factors are balanced with an overall focus on whether and how the organization serves the public interest and lessen the State’s burden. See DuPage County Board of Review v. Joint Comm’n on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461 (2nd Dist. 1995). Thus, the issue before this tribunal is whether Applicant is “an institution of public charity” under the terms of Korzen. I conclude, based on the documentary evidence presented, that it is not an “institution of public charity.”

Of the five characteristics discussed in Korzen, the Department concedes that Applicant has no capital, capital stock, or shareholders, and earns no profit or dividends.

Also, there is no dispute that Applicant has met the second-prong of the fourth characteristic of a charitable organization in that Applicant provides no gain or profit in a private sense to any person connected with it. Tr. p. 77. This recommendation is narrowed to a discussion of the remaining Korzen characteristics.

In determining whether an organization is charitable in its purpose and therefore exempt from taxation, it is proper to consider provisions of its charter. Rotary International v. Paschen, 14 Ill. 2d 387 (1957). Applicant was organized in 2013 as a not-for-profit corporation through the merger of the membership of the *GHI Association* and the *JKL Association*. Tr. pp. 44, 56; App.'s Ex. A, C. Its mission is to promote XYZs in Illinois by providing education, assistance, training and development through collaboration of behavioral health and justice systems. Tr. p. 46; App.'s Ex. A, J. Applicant's primary activity is holding an annual training conference where it provides education, assistance, and training to its members. The annual conference consists of a series of high-quality educational/training seminars and presentations by state and nationally recognized XYZ practitioners and experts. Tr. pp. 47, 49; App.'s Ex. A, E, J-L.

Applicant's essential argument is that it's entitled to a sales tax exemption because it provides training to its membership with a purpose of enhancing the effectiveness of XYZs, which ultimately benefits the XYZ participants and the public. Tr. pp. 74-75. There is a problem with this argument. While Applicant described a multitude of benefits of XYZ, these are the activities of XYZ, not an actual charity or services Applicant directly provides to XYZ participants and the public. To be exempt from taxes under the UTA and the ROTA, an institution must be organized and operated "exclusively" for charitable purposes. 35 ILCS 105/3-5(4) and 35 ILCS 120/2-5(11). An "exclusively" charitable purpose need not

be interpreted literally as the entity's sole purpose; it should be interpreted to mean the primary purpose, and not a merely incidental or secondary purpose or effect. Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430 (1st Dist. 1987). In determining whether an institution is exempt from taxation, the test is whether its primary purpose is charitable. People v. Young Men's Christian Ass'n of Chicago, 365 Ill. 118 (1936). It is well settled in Illinois that incidental acts are legally insufficient to establish that the applicant is "exclusively" or primarily a charitable organization. Rogers Park Post No. 108 v. Brenza, 8 Ill. 2d 286 (1956).

While there was testimony that Applicant serves as a resource for the public with any questions regarding XYZ, there is no assertion this is its primary activity. These activities are the secondary or incidental to its primary activity of holding an annual training conference.¹ See Tr. pp. 63-64; App.'s Ex. A. As laudable as Applicant's underlying mission, the evidence of record demonstrates that Applicant does not have a primary charitable purpose. Applicant exists, not for a charitable purpose, in the legal sense, but because of its dues-paying members' mutual interests in promoting XYZ through a paid membership training to better collaborate with other XYZ professionals. There may be a secondary benefit to the public, but I fail to see how its work or the work of its members can be described as charity. The direct beneficiaries of Applicant's membership/conference are its dues-paying members only. Just as any organization providing training for a fee is not dispensing charity, Applicant, likewise, is not dispensing charity to anyone. Applicant's essential function is analogous to an industry interest group formed to train its dues-paying members. Applicant's claim that it reduces a government

¹ Doe stated that Exhibit A, while unsigned, it is a letter he drafted and sent to Illinois Secretary of State explaining Applicant's mission and the primary activity. Tr. p. 56.

burden by providing training mandated by Illinois Supreme Court is not persuasive. The standards set by the Court have no bearing on whether Applicant is a charitable organization. An easy parallel is the Illinois Supreme Court requiring all licensed attorneys to attend continuing legal education (hereinafter “CLE”) to maintain licensure. Some attorneys join bar associations to network and find resources including free CLE seminars. Their clients are not the primary or direct beneficiaries of an attorney’s law license but the attorneys who earn a living by practicing law. Similarly, compensated work Applicant’s members provide to XYZ is not a charity nor can it be attributed to Applicant’s charitable purpose.

An indirect benefit ultimately conferred upon the public is secondary to Applicant’s primary purpose of serving its dues-paying members. In applying the Korzen characteristics the court in Board of Certified Safety Professionals of the Americas, Inc. v. Johnson, 112 Ill.2d 542 (1986) (hereinafter “Board”), affirmed the Department's denial of property tax exemption to the Board of Certified Safety Professionals of the Americas, Inc., a not-for-profit corporation that issues certificates to safety professionals who pass examinations it conducts. The court noted that the Board's activities benefit primarily a particular class of people, namely safety professionals, and only indirectly the general public. The court further noted that the public benefits of the activities of the members of the safety profession are the result of services rendered by those members, who would perform the same function with or without Board certification. Board at 546.

Similarly, in Du Page County Board of Review et al., v. Joint Commission on Accreditation of Care Organizations et al., 274 Ill.App.3d 461 (2nd Dist. 1995) (“Joint Commission”), the court reversed the Department's finding of tax exemption and found

that Joint Commission's primary activities of development of standard setting for health organizations did not benefit indefinite number of persons. The court stressed that Joint Commission's work only provided an indirect benefit to an indefinite number of persons, while the direct beneficiaries of the Joint Commission's work were “the health care providers who, when accredited by the Joint Commission, can receive reimbursement from both private and public sources of funding (i.e., private insurance and [M]edicare or [M]edicaid).” Joint Commission at 464, 469.

In the instant case, Applicant’s activities do not directly benefit an indefinite number of persons or reduce a burden on government, which are characteristics of a charitable organization. As in Board and Joint Commission, the public benefits of the Applicant’s conference are the result of work, not charity, rendered by those members receiving training, who would perform the same function as judges, lawyers, probation officers, and mental health professionals, etc., with or without Applicant’s paid conference. It is not the Applicant but its members working for XYZ, most of whom either work in government or for organizations that are either funded by or contracted with government, that presumptively lessen government burden to control crime and reduce recidivism. Compensated work Applicant’s members provide to their employers at the various XYZs statewide and consequently to their voluntary program participants are not charity nor can be attributed to Applicant’s charitable purpose. To continue the analogy previously used, while the government imposes attorney licensure requirements, there is no government burden to provide CLE to attorneys. Equally, there is no government burden to assist a membership organization, akin to professional or trade organizations, formed by XYZ professionals to train themselves and to promote XYZ. As there is no government burden

to train XYZ professionals, it is immaterial whether Applicant offers a less expensive option for training.

Just as the court highlighted in Institute of Gas Technology v. Department of Revenue, 289 Ill. App. 3d 779 (1st Dist. 1997), all of Applicant's work here goes to benefit a specific group. It is solely its membership who directly benefits in the form of professional development and to be in compliance with the Illinois Supreme Court training mandate for XYZ professionals. App.'s Ex. H. Applicant's conference is unavailable to the public, nor to non-member XYZ professionals, as one must be a member to attend the conference. If indeed Applicant's mission is to promote XYZ and its voluntary participants, a logical position would be to permit conference attendance to all XYZ professionals in various disciplines irrespective of membership. That is not the case here. I conclude that Applicant has not met its burden of demonstrating by clear and convincing evidence (*see Evangelical Hospitals*, 223 Ill.App.3d at 231 (2nd Dist. 1991)) that it meets the first Korzen characteristic of a charitable organization.

As noted earlier, the second Korzen characteristic of a charitable organization is not at issue. Tr. p. 77. As to the third Korzen characteristic, there is no factual dispute that all of Applicant's income derives from its paid annual membership conference. Tr. pp. 45, 48, 77; App.'s Ex. A, E. Despite this and for reasons not clearly stated, Applicant has stressed through *Smith's* testimony that the membership/registration fees are funded by public funds given to 105 under which XYZ receives funding and uses it to pay for their team members to attend Applicant's conference. Tr. pp. 66-67. The established laws governing use tax exemptions require that the funds come from charitable donations, not from fees paid from public or private funds at Applicant's membership conference. *See*

Korzen at 157. Accordingly, I find that Applicant has failed to meet the third Korzen characteristic of a charitable organization that funds are derived mainly from private and public charity and held in trust for the objects and purposes expressed in the charter.

The fourth Korzen characteristic is a two-prong inquiry, of which the second-prong is not in dispute. Tr. p. 77. The record shows that Applicant does not meet the first-prong inquiry that the organization dispenses charity to all who need and apply for it. Applicant's membership eligibility requirement plainly demonstrates its services are not universally dispensed to all who need and apply for it. Applicant's membership is limited only to those persons dedicated to promoting XZY, contingent upon board approval, and a timely payment of membership dues and fees. App.'s Ex. D. The dues-paying membership is given privileges not provided to the public because membership is required for anyone to attend the conference. Taxpayer unmistakably is a membership organization, without evidence that any person or organization is exempt from the eligibility requirements.

Imposition of membership and conference fees further supports a finding that Applicant's purported charity is not universally dispensed. Although Applicant's board may on a case-by-case basis waive or reduce membership dues and fees based on financial hardship, but no evidence was presented that these were ever waived or reduced. Tr. pp. 56-57; App.'s Ex. D. Rather, the evidence affirms that termination of membership occurs, among several factors, for a failure of the member to pay dues, fees, or assessments within one month after they become due and payable. App.'s Ex. D. These facts support a finding that Applicant failed to satisfy the first-prong of the fourth Korzen characteristic of a charitable organization.

The fifth and final Korzen characteristic of a charitable organization is whether the organization places obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses. It is recognized that charging fees and rendering benefits to persons who are not poverty stricken does not destroy the charitable nature of an organization for tax exemption purposes, but this is only true to the extent that the organization also admits persons who need and seek benefits offered but are unable to pay. Wyndemere Retirement Community v. Department of Revenue, 274 Ill. App. 3d 455 (2nd Dist. 1995). Applicant's purported charity is not given freely to anyone including its own dues-paying member, as the membership dues are built into the conference fee and cannot be paid separately or opted out. Despite a waiver provision in the Applicant's bylaws for dues and fees, granted at Applicant's discretion, no evidence was presented that the board exercised a discretion to waive the dues/fees or that it has an advertised fee waiver policy² for a potential member who was financially unable to pay. Tr. pp. 56-57; App.'s Ex. D. The record contains no evidence that the public is aware of Applicant's fee waiver policy as specified in its amended bylaws. Among the voluminous records Applicant presented including the contents of its website, conference materials, and testimonies, no evidence points to the Applicant's advertised waiver policy. When charity is not advertised, it is impossible to conclude that charity is dispensed to all who need it. Those who need charity may not apply because it is not advertised and they do not know that it is available. Imposition of membership eligibility and dues/fees requirements without an advertised fee waiver policy present a definite obstacle to those who may avail

² Even if Applicant had advertised its fee waiver policy, because the membership is contingent upon the board approval, the public may still be precluded from membership.

themselves of Applicant's conference. When the primary benefit of an organization flows to its members and not the public, then an exemption will be denied. Board at 546.

In Highland Park Hospital v. Department of Revenue, 155 Ill. App. 3d 272 (2d Dist. 1987), the court found that an immediate care center did not qualify for a charitable exemption because, *inter alia*, the advertisements for the facility did not disclose its charitable nature. The court stated that "the fact is that the general public and those who ultimately do not pay for medical services are never made aware that free care may be available to those who need it." *Id.* at 281. Similarly, the court in Alivio Medical Center v. Department of Revenue, 299 Ill. App. 3d 647 (1st. Dist. 1998), denied a charitable exemption to a medical care facility in noting, *inter alia*, that "[A]livio does not advertise in any of its brochures that it provides charity care, nor does it post signs stating that it provides such care." Alivio Medical Center at 652. Applicant presented no evidence it displays a sign at the annual conference or on its website advertising to the public the availability of a fee waiver. App.'s Ex. J-L. This is an obstacle to receiving benefits and supports a conclusion that charity is not dispensed to all who need it. A charity dispenses charity and does not obstruct the path to its charitable benefits. Eden Retirement Center v. Dept. of Revenue, 213 Ill. 273, 287 (2004). This, together with the provision in the Applicant's bylaws for a termination of membership due to nonpayment, I conclude that Applicant lacks a fee waiver policy. Assuming, *arguendo*, that indirectly promoting a more effective operation of XYZ were a charitable purpose or endeavor, Applicant's membership eligibility requirement, membership dues, conference fees, and the lack of an advertised fee waiver provision for those unable to pay support a finding that Applicant has not met by clear and convincing evidence the fifth Korzen characteristic of a charitable

organization that no obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses.

In balancing Applicant's characteristics of a charitable organization with an overall focus on whether and how the organization serves the public interest and lessens the State's burden, as noted in Joint Commission, I conclude that Applicant confers no direct public benefit, nor reduces a government burden. Applicant is a paid membership organization with its primary activity of hosting a paid annual conference reserved exclusively for the membership, without a clear advertised waiver policy. The fourth and fifth Korzen characteristics that a charitable organization dispense charity to all who need and apply for it and place no obstacles in their way, are "more than guidelines." They are "essential criteria" and "go to the heart of what it means to be a charitable institution." Provena Covenant Medical Center v. Department of Revenue, 384 Ill. App. 3d 734, 750 (4th Dist. 2008), aff'd, 236 Ill. 2d 368 (2010). Although Applicant has no stocks or shareholders and inures no personal gain to anyone associated with it, without it meeting the "essential criteria" above, I conclude that Applicant is not an institution of public charity.

Tax exemptions are inherently injurious to public funds because they impose lost revenue costs on taxing bodies and the overall tax base. To minimize the harmful effects of such lost revenue costs, and thereby preserve the Constitutional and statutory limitations that protect the tax base, statutes conferring property tax exemptions are to be strictly construed in favor of taxation. People ex rel. Nordland v. Home for the Aged, 40 Ill. 2d 91 (1968). Great caution must be exercised in determining whether property is exempt to ensure that "sound principles" are preserved, unwarranted exemptions from taxation are avoided and that only the limited class of properties meant to be exempt actually receives

the exempt status that the Legislature intended to confer. Otherwise, any increases in lost revenue costs attributable to unwarranted application of the charitable exemption will cause damage to public treasuries and the overall tax base. In this case, Applicant bears the burden of proving “by clear and convincing” evidence that the exemption applies. Evangelical Hospitals Corp. v. Department of Revenue, 223 Ill. App. 3d 225 (2nd Dist.1991). Applicant has failed to prove by clear and convincing evidence that it is an exclusively charitable organization, as required for exemption under Illinois statutes, and that it falls within the limited class of institutions meant to be exempt for charitable purposes.

For the above stated reasons, I recommend that the Department’s determination denying the Applicant a sales tax identification number be affirmed.

ENTER:

February 6, 2018

Kelly K. Yi
Administrative Law Judge