

ST 18 - 05

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

v.

ABC ORGANIZATION

Taxpayer

No. XX-ST-XXXX

DENIAL OF SALES TAX
EXEMPTION

Ted Sherrod
Administrative Law
Judge

RECOMMENDATION FOR DISPOSITION

Appearances: Special Assistant Attorney General Paula Hunter on behalf of the Illinois Department of Revenue; MICHAEL GREEN, *pro se* on behalf of ABC Organization

Synopsis:

ABC Organization (“Taxpayer”) sent an application to the Department of Revenue (“Department”) for an exemption identification number in order to sell tangible personal property at retail free from the imposition of Retailers’ Occupation Tax at fundraising dinners conducted by the Taxpayer periodically each calendar year.¹ The Department denied the application, and the Taxpayer timely protested the denial. An

¹ During the hearing, MICHAEL GREEN, the Taxpayer’s Finance Officer conceded that being granted an exemption to conduct annual periodic dinners would allow it to exempt only sales at “occasional dinners”, which the Department defines as no more than two dinners each calendar year. See Department regulation 86 Ill. Admin. Code, ch. I, section 130.2005(a)(4).

evidentiary hearing was held before Administrative Law Judge Ted Sherrod on September 13, 2017. The issue presented is whether the Taxpayer is primarily a charitable organization. The Taxpayer is a member association composed mostly of veterans that previously served in the U.S. military. The Taxpayer claims that it is organized primarily for charitable purposes. The Department contends that the Taxpayer is primarily a patriotic and civic organization functioning principally to benefit its members and that it is not a charity. 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 nonprofit organization. Tr. pp. 9, 19.
2. The Taxpayer is a member association that has no capital, capital stock or shareholders. Taxpayer's Ex. 1 (By-laws and Preamble of ABC Constitution).
3. According to the Taxpayer's by-laws, the Taxpayer's purposes are "to promote the principles and policies set forth in the Constitution of THE ABC" which, as set forth in the "PREAMBLE OF THE CONSTITUTION OF THE ABC" are as follows:

To uphold and defend The Constitution of the United States of America;
To maintain law and order;
To foster and perpetuate A (*sic*) one hundred percent Americanism;
To preserve the memories and incidents Of (*sic*) our associations in Great Wars;
To inculcate a sense of individual obligation To (*sic*) the community, state and nation;
To combat the autocracy Of (*sic*) both the classes and the masses;
To make right the master of might;
To promote peace and good will on earth;
To safeguard and transmit to posterity The (*sic*) principles of Justice, Freedom and Democracy;
To preserve and sanctify our comradeship By (*sic*) devotion to mutual helpfulness.
Taxpayer's Ex. 1. (Preamble of Constitution of ABC)

4. The Taxpayer is headed by a LEADER. Taxpayer's Ex. 1 (By laws Article V, VI).
The other officers of the Taxpayer are the Senior Vice LEADER, the Junior Vice LEADER, the Adjutant, the Recording Adjutant, the Finance Officer, the Service Officer, the Chaplain, the Historian, the Judge Advocate, and the Sergeant-at-Arms.
Id. The Taxpayer's by-laws do not provide for the payment of any compensation to these officers by the Taxpayer.
5. The Taxpayer's members are required to pay annual dues of \$XXX. Taxpayer's Ex. 1 (By-laws Article VIII). New members are required to pay dues immediately upon joining the Taxpayer. *Id.*
6. Only persons eligible for membership in ABC posts pursuant to the National Constitution of the ABC can become members of the Taxpayer. Taxpayer's Ex. 1 (By-laws Article IV). A candidate for membership may be refused admission either by a committee of three chosen from the membership designated by the membership to oversee the qualifications of candidates or by a majority vote of a quorum of the members of the Taxpayer. *Id.*
7. 75% to 80% of the Taxpayer's members are military veterans. Tr. p. 18.
8. The principal activities of the Taxpayer indicated in the record are monthly meetings held on the first Thursday of each month, an annual meeting held during the first business meeting in June each year, and the conduct of five fundraising dinners each year. Tr. p. 19; Taxpayer's Ex. 1 (By-laws Article III). Revenues raised from the conduct of fundraising dinners along with membership dues are the exclusive source

of the Taxpayer's revenue identified in the record. Tr. p. 19; Taxpayer's Ex. 1 (By-laws Article VIII).

9. The Taxpayer makes donations to churches, hospitals (including veterans' hospitals) and other community organizations (including a retirement home for veterans). Tr. pp. 18, 19, 24. The donations made by the Taxpayer are both monetary and in-kind. Tr. p. 24. The annual amount of donations made by the Taxpayer in any current or previous calendar or fiscal year is not indicated in the record.
10. With the exception of a \$XXX per month expense account paid the Taxpayer's Finance Officer (Taxpayer's Ex. 1 By-laws Article VI) and a \$XXX per month expense account provided the Taxpayer's Building manager (Taxpayer's Ex. 1 By-laws Article VII), the annual expenses of the Taxpayer, including the cost of maintaining the Taxpayer's building and of conducting meetings and dinners is not indicated in the record.
11. The Taxpayer is not exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code. Tr. pp. 16, 17, 19.
12. The Taxpayer is seeking exemption for sales by the Taxpayer at "occasional" dinners which the Department defines as two dinners each calendar year allowed organizations organized and operated primarily for charitable purposes by Department regulation 86 Ill. Admin. Code, ch. I, section 130.2005(a)(4). Tr. pp. 16, 19.

Conclusions of Law:

Department of Revenue regulation 86 Ill. Admin. Code, ch. I, section 130.2005 provides in part as follows:

- a) **Sales by Nonprofit Service Organizations** Effective August 1, 1961, nonprofit country clubs, boat clubs, employees' clubs or organizations and other nonprofit social, athletic or recreational organizations, lodges, patriotic organizations, fraternities, sororities, professional and trade associations, civic organizations, labor unions and other nonprofit persons who are not exclusively charitable, religious or educational organizations are liable for Retailers' Occupation Tax when selling tangible personal property at retail to members, guests or others. The same is true of exclusively charitable, religious or educational organizations with certain limited exceptions.

1) Scope of the Exemption

A) There still are some very limited exemptions from the Retailers' Occupation Tax for sales by exclusively charitable, religious and educational organizations and institutions. However, the exemption is not available unless the selling organization or institution does qualify as an "exclusively" charitable, religious or educational organization or institution.

E) Exclusively charitable, religious and educational organizations incur Retailers' Occupation Tax liability when they engage in selling tangible personal property at retail except in three situations.

4) Occasional Dinners and Similar Activities

A) The third exception is that occasional dinners, socials or other similar activities which are conducted by exclusively charitable, religious or educational organizations or institutions are not taxable, whether or not such activities are open to the public. This exemption extends to occasional dinners, ice cream socials, fun fairs, carnivals, rummage sales, bazaars, bake sales and the like, when conducted by exclusively charitable, religious or educational organizations or institutions, whether the items that are sold are purchased or donated for the purpose of the sale, and even if the sale is open to the public.

B) For purposes of this exemption, “occasional” means not more than twice in any calendar year. Where more than two events are held in any calendar year, the organization or institution may select which two events held within that year will be considered exempt. Once the organization or institution has made the selections, the selections cannot be changed. All other events in that year will be considered taxable.

Pursuant to the foregoing, in order to receive an exemption identification number exempting its sales of tangible personal property, the Taxpayer must be an “exclusively” charitable, religious or educational organization. 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). In the instant case, the Taxpayer contends that it is organized and operated “exclusively” (i.e. primarily) for charitable purposes and therefore is entitled to the exemption for “occasional dinners” authorized by Department regulation 130.2005(a)(4).

In order to determine whether the Taxpayer is an “exclusively” charitable organization, 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 the 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 in the way of those who need and would avail themselves of the charitable benefits it dispenses; and (6) whether the primary purpose of the organization, not any secondary or incidental purpose, is charitable. Wyndemere Retirement Community v. Department of Revenue, 274 Ill. App. 3d 455, 459-60 (2nd Dist. 1995) (citing Methodist Old Peoples Home v. Korzen, 39 Ill. 2d 149, 156-57 (1968)).² These factors are balanced with an overall focus on whether and how the organization serves the public interest and lessens the State's burden. DuPage County Board of Review v. Joint Commission on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461, 469 (2nd Dist. 1965). Whether an institution has been organized primarily for an exempt purpose is determined from its charter, bylaws and actual facts relating to its method of operation. DuPage County Board of Review, *supra* at 466.

A taxpayer has the burden of proving by clear and convincing evidence that it is entitled to an exemption. Rogy's New Generation, Inc. v. Department of Revenue, 318 Ill. App. 3d 765, 771 (1st Dist. 2000); 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.

² Because these factors are also used to analyze charitable exemptions for property taxes, cases involving property taxes are cited herein. See Wyndemere, *supra*.

3d 293, 296-97 (1st Dist. 1981). A taxpayer must present sufficient documentary evidence to support its claim. *Id.*

The Department argues that the Taxpayer is not organized primarily for charitable purposes, and does not meet most of the factors of Wyndemere, *supra*, and Methodist Old People's Home, *supra*. The Department contends that the primary function of the Taxpayer is to serve the needs of its members, over 75% of who are military veterans, by providing a forum for fellowship and comradeship. It follows from this contention that, in the Department's view, the Taxpayer does not benefit an indefinite number of people, persuading them to an educational or religious conviction, for the general welfare or in some way reducing the burdens of government, a key characteristic indicative of a charity identified in Wyndemere, *supra* and Methodist Old People's Home, *supra*.

Implicit in the Department's contention that the Taxpayer does not meet most of the tests for determining whether an organization is a charity identified in Wyndemere, *supra* and Methodist Old People's Home, *supra* is the claim that the Taxpayer's income is not derived mainly from private or public charity, that charity is not dispensed to all who need and apply for it and that the Taxpayer places obstacles in the way of those who need and would avail themselves of the Taxpayer's charitable benefits by primarily benefiting its dues paying members.

The Taxpayer argues that it is not organized primarily to benefit its members, and that its primary function is to dispense charitable donations to churches, hospitals and other organizations. Tr. pp. 18, 19, 24. It claims that none of its activities are conducted for profit. Tr. p. 18. The Taxpayer presented no documentary evidence of any kind to

substantiate its claims. Moreover, the Taxpayer admitted that all of its funds are received from its dinner events and from membership dues. Tr. p. 18.

The evidence presented by the Taxpayer is not sufficient to support receiving an exemption identification number. As pointed out by the Department during the hearing, the Department's regulation concerning charitable organizations provides, in relevant part, as follows:

Nonprofit Bar Associations, Medical Associations, Lions Clubs, Rotary Clubs, Chambers of Commerce and other professional trade or business associations and labor unions, which draw funds largely from their own members, and as to which an important purpose is to protect and advance the interests of their members in the business world, are not organized and operated exclusively for charitable ... purposes, even though such organizations may engage in some charitable ... work. The same conclusion applies to the American Legion, Veterans of Foreign Wars, Amvets, the Daughters of the American Revolution and similar nonprofit patriotic organizations.
86 Ill. Admin. Code §130.2005(g) (Emphasis added)

The Taxpayer's description of itself in its by-laws indicates that it is identical to the American Legion nonprofit patriotic organization referred to in the Department's regulation. Specifically, the Taxpayer's by-laws state the following:

Objects

Section 1 – The object of this Post shall be to promote the principles and policies set forth in the Constitution of THE ABC.
Taxpayer's Ex. 1 (By-laws Article II)

The foregoing evidence clearly indicates that the Taxpayer is a type of organization that is not allowed an exemption identification number under the Department's regulation. See also Rogers Park Post No. 108 American Legion v. Brenza, 8 Ill. 2d 286 (1956) (purposes of fostering love of country, respect for civil institutions, and benefiting and

affording comradeship to members are patriotic, laudable and public spirited but do not constitute charitable purposes).

The list of purposes enumerated in the Constitution of the ABC, adopted as the purposes of the Taxpayer in Article II of the Taxpayer's by-laws quoted above, confirms that the Taxpayer is not organized primarily for charitable purposes. The list of purposes enumerated in the preamble to the Constitution of the ABC states as follows:

To uphold and defend The Constitution of the United States of America;
To maintain law and order;
To foster and perpetuate A (*sic*) one hundred percent Americanism;
To preserve the memories and incidents Of (*sic*) our associations in Great Wars;
To inculcate a sense of individual obligation To (*sic*) the community, state and nation;
To combat the autocracy Of (*sic*) both the classes and the masses;
To make right the master of might;
To promote peace and good will on earth;
To safeguard and transmit to posterity The (*sic*) principles of Justice, Freedom and Democracy;
To preserve and sanctify our comradeship By (*sic*) devotion to mutual helpfulness.
Taxpayer's Ex. 1.

As the foregoing indicates, the Taxpayer's primary purpose is to promote the national security and well being, and the values and heritage of the United States through fraternity and comradeship.

As previously noted, a major consideration in determining whether an institution is primarily a charitable organization is its purposes enumerated in its charter and by-laws. DuPage County Board of Review, *supra*. The word "charitable" is not mentioned in the Taxpayer's by-laws as an objective of the Taxpayer. From this fact I deduce that any charitable purposes emanating from donations the Taxpayer makes to hospitals,

churches and other organizations is incidental to the primary social, patriotic and civic purposes enumerated in the Taxpayer's by-laws and the purposes enumerated in the ABC Constitution the Taxpayer's by-laws have adopted as the Taxpayer's purposes.

I also find that the evidence presented by the Taxpayer is insufficient on its face to support the Taxpayer's claim that its request for exemption has been erroneously denied by the Department. As previously noted, a taxpayer has the burden of proving by clear and convincing evidence that it is entitled to an exemption. Rogy's New Generation, Inc., *supra*; Wyndemere, *supra*; Gas Research Institute, *supra*. It is well-settled that tax exemption provisions are strictly construed in favor of taxation. *Id.*; Heller, *supra*. 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, *supra*; Balla, *supra*. The taxpayer must present sufficient documentary evidence to support its claim. *Id.*

The evidence presented by the Taxpayer is not sufficient to support its claim for an exemption identification number because the Taxpayer's claim to have engaged primarily in charitable activities is not substantiated by documentary evidence and the evidence the Taxpayer presented does not indicate that the Taxpayer operates primarily for charitable purposes. Although the Taxpayer's by-laws confirm that the Taxpayer has no capital, capital stock or shareholders, the Taxpayer did not provide any documentary evidence to show its complete financial information for any fiscal or calendar year. Indeed, the only financial information of any kind provided during the hearing was the Taxpayer's admission that the Taxpayer is not exempt from federal income tax as a 501(c)(3) corporation. Tr. pp. 16, 17, 19.

Without complete financial information for any year, it is impossible to determine whether the Taxpayer is primarily a charitable organization. As indicated by the tests to determine the “charitable” nature of an organization enumerated in Wyndemere and in Methodist Old People’s Home noted above, both the use of funds and the source of funding are critical in determining whether the Taxpayer is a charitable organization. To prove its case, a Taxpayer must present more than its testimony denying the Department’s determination. Sprague, *supra*; Balla, *supra*. The Taxpayer must present sufficient documentary evidence to support its claim. *Id.* A judge acting as the finder-of-fact is not bound to accept un rebutted testimony. Franciscan Communities, Inc. v. Hamer, 2012 IL App. (2d) 110431, ¶ 47. Irrespective of other reasons for exemption denial indicated herein, the lack of financial information to substantiate the Taxpayer’s claims regarding its revenues and expenditures in and of itself warrants denial of exemption.

Moreover, even with the limited information provided by the Taxpayer, the evidence does not support a finding that the Taxpayer operates primarily as a charitable organization. During the hearing, the Taxpayer essentially conceded that a major portion of its annual revenue is from five dinner events that it holds each year. Tr. p. 19. Additional income is provided by dues paid to the Taxpayer by its members. Taxpayer’s Ex. 1 (Bylaws Article VIII). From this evidence I deduce that pure donations from the public are minimal to non-existent. This evidence supports the conclusion that the Taxpayer’s income is not from public or private charity, a characteristic enumerated in Wyndemere, and Methodist Old People’s Home to be taken into account in determining whether a taxpayer is a charity.

In addition to the foregoing, there is ample other evidence in the record that the Taxpayer is not engaged in the operation of a charity. The record only contains evidence of activities that promote the interests of the Taxpayer's members by holding meetings and dinners providing an opportunity for fraternization and comradeship which is expressly identified as one of the Taxpayer's principal purposes. Taxpayer's Ex. 1 (Preamble of the Constitution of the ABC made part of the Taxpayer's purposes by Article II of the Taxpayer's by-laws, which states as a purpose "[T]o consecrate and sanctify our comradeship By (*sic*) our devotion to mutual helpfulness"). The aforementioned activities primarily promote the social interests of the Taxpayer's members. Because there is no documentary evidence showing that the Taxpayer does anything more than promotes these social interests, I find no concrete evidence that the Taxpayer benefits an indefinite number of people or relieves a governmental burden, additional characteristics to be considered in determining whether the Taxpayer is a charity. Wyndemere, *supra*; Methodist Old Peoples' Home, *supra*.

As previously noted, the amount of charity the Taxpayer provides is not clear. 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 not merely helpfulness, but generosity; to be charitable, an organization must give liberally. *Id.* Whether the charitable activities engaged in by the Taxpayer meet this high threshold is not clear from the record in this case.

In sum, the evidence presented by the Taxpayer does not show that the Taxpayer is primarily a charitable organization under the guidelines enumerated for making this determination in Wyndemere, *supra* and Methodist Old People's Home, *supra* noted

above. Moreover, regulation section 130.2005(g) identifies the “ABC”, an organizational characterization into which the Taxpayer clearly fits, as a type of organization that does not qualify as “exclusively” (i.e. primarily) charitable. For the foregoing reasons, I find that the Taxpayer has failed to carry its burden of proving by clear and convincing evidence that it is entitled to the exemption it claims. Rogy’s New Generation, Inc., *supra*; Wyndemere, *supra*; Gas Research Institute, *supra*.

Recommendation:

For the reasons indicated herein, it is recommended that the Taxpayer’s request for an exemption identification number be denied.

Ted Sherrod
Administrative Law Judge

Date: September 27, 2017