

ST 11-02

Tax Type: Sales Tax

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

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

<p><b>THE DEPARTMENT OF REVENUE OF THE STATE OF ILLINOIS,</b></p> <p>v.</p> <p><b>ABC Corporation,</b></p> <p style="text-align: center;"><b>TAXPAYER</b></p>	<p><b>Docket No: 00-ST-0000</b></p> <p><b>Sales Tax Exemption</b></p> <p><b>Kenneth J. Galvin</b> <b>Administrative Law Judge</b></p>
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**RECOMMENDATION FOR DISPOSITION**

**APPEARANCES:** Mr. John Doe, *pro se*, on behalf of ABC Corporation, Inc.; Mr. John Alshuler, Special Assistant Attorney General, on behalf of the Department of Revenue of the State of Illinois.

**SYNOPSIS:** ABC Corporation, Inc., (hereinafter “ABC Corporation”) requested that the Illinois Department of Revenue (hereinafter the “Department”) issue the organization an exemption identification number so that it could purchase tangible personal property free from the imposition of use tax as set forth in 35 ILCS 105/1 *et seq.* On June 19, 2009, the Department issued a “Second Denial of Sales Tax Exemption” to ABC Corporation. On September 30, 2009, ABC Corporation protested the Department’s decision and requested a hearing, which was held on September 2, 2010, before Administrative Law Judge Julie-April Montgomery, with testimony from Mr. Smith, conductor and host of

the radio program “Living Gospel in English,” and Mr. Jones, a volunteer at ABC Corporation.<sup>1</sup> The sole issue to be determined at the hearing was whether ABC Corporation qualified for an exemption identification number as a corporation, society, association, foundation or institution organized and operated exclusively for religious purposes. 35 ILCS 105/3-5(4). Following a careful review of the evidence and testimony presented at the hearing, I recommend that the Department’s second denial be affirmed.

**FINDINGS OF FACT:**

1. The Department’s case, inclusive of all jurisdictional elements, is established by the admission into evidence of the Department’s second denial of exemption dated June 19, 2009. Tr. pp. 5-6; Dept. Ex. No. 1.
2. On March 14, 2007, Francis Cardinal George, Archbishop of Chicago, appointed Reverend XXXXXX as “liaison to ABC Corporation.” Tr. pp. 6-7; App. Ex. No. 1.
3. ABC Corporation “is a response to the Pope’s call to evangelize the world through radio.” The goal of the ABC Corporation Project “is to save souls, that is the annunciation of the conversion by re-proposing the Catholic faith by creating national radio stations and correlated editorial activity...” The ABC Corporation Project “has been designated a free initiative of priests, monks and nuns and faithful laypeople and is created in every country of the world through the institution of a separate, independent and national legal entity.” The scope of this entity “is to create a radio station which acquires the name and exclusive use of the ‘ABC Corporation’ trademark in the country where it operates...” Tr. p. 8, 14; App. Ex. No. 3.

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<sup>1</sup> ALJ Montgomery, currently on leave, was unable to write this Recommendation.

4. ABC Corporation is exempt from income tax under Section 501(c)(3) of the Internal Revenue Code. Tr. p. 9; App. Ex. No. 6.
5. “The Guideline Principles” for the ABC Corporation Project require that each entity “guarantee the correct progress of profit and loss statements and clear use of the donations through organization of an efficient, competent and scrupulous management of the activity, assuming the obligation to provide for an annual audit of the administration by an outside organization specialized in auditing and send the final financial statement and budget to the administration ...” App. Ex. No. 3.
6. No profit and loss statement, final financial statement or budget were offered into evidence by ABC Corporation.
7. Broadcasting on ABC Corporation is only available with a “C band radio” or on the internet. ABC Corporation uses a subcarrier frequency and that subcarrier is only picked up on a C band radio. These radios are generally not commercially available but can be purchased from ABC Corporation. Tr. pp. 18-19.

**CONCLUSIONS OF LAW:**

An examination of the record establishes that ABC Corporation has not demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant an exemption from use tax. In support thereof, I make the following conclusions.

The applicant seeks to qualify for an exemption identification number as a corporation, society, association, foundation or institution organized and operated exclusively for religious purposes. 35 ILCS 105/3-5(4); 35 ILCS 120/2-5(11). 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 (2d Dist.1991). Moreover, it is well established 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).

Guidelines for determining whether an entity is tax-exempt in property tax cases are also applicable to use tax cases. Friends of Israel Defense Forces v. Department of Revenue, 315 Ill. App. 3d 298 (1<sup>st</sup> Dist. 2000). The Property Tax Code states that property used exclusively for “religious purposes” qualifies for exemption “as long as it is not used with a view to profit.” 35 ILCS 200/15-40. The word “exclusively” when used in Section 200/15-40 and other exemption statutes means “the primary purpose for which property is used and not any secondary or incidental purpose.” Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App. 3d 186 (4<sup>th</sup> Dist. 1933).

The “religious purposes” contemplated by the Property Tax Code involve the use of property “as a stated place for public worship, Sunday schools, and religious instruction.” People ex rel. McCullough v. Deutsche Evangelisch Lutherisch Jehova Gemeinde Ungeanderter Augsburgischer Confession, 249 Ill. 132, 136-137 (1911) (hereinafter McCullough). In Provena Covenant Medical Center v. Department of Revenue, 384 Ill. App. 3d 734, 767 (4<sup>th</sup> Dist. 2008), aff’d, 236 Ill. 2d 368 (2010), where Provena Covenant was seeking a religious property tax exemption for Provena Hospital, the Court noted that if “public worship, Sunday schools and religious instruction” are illustrative of the nature of religious use, “it must follow that ‘religious use’ has a determinable nature and that to be a religious use, the activity must somehow resemble

the activities listed in McCullough.” My research indicates no reported cases in Illinois in which radio broadcasting falls within the purview of the illustrative definition of “religious purpose” set forth by the Illinois Supreme Court in McCullough.

Additionally, I am unable to conclude from the record in this case that ABC Corporation’s broadcasting is exclusively religious or that the programs broadcast “resemble” public worship, Sunday schools and religious instruction. ABC Corporation caused to be admitted into evidence a “programming schedule” which is a one-week schedule of its broadcast programs. Tr. p. 8; App. Ex. No. 2. There is no testimony in the record as to whether this one week schedule is repeated every week of the year. There is undoubtedly some religious programming on the schedule. However, the schedule also contains programs such as “Healing In Our Family,” “Your Health In Your Hands,” “Woman and Self Esteem,” “View Hispanoamericano,” “Alcoholics Anonymous,” and “Woman If You Knew,” all of which have no clear connection with religion. App. Ex. No. 2.

The “Characteristics” of ABC Corporation, according to a document entitled “ABC Corporation Project” state that “[F]rom its beginnings a third of the programming has been occupied by prayer, which is the soul of all programming.” There is no testimony in the record as to what the other two-thirds of the programming consists of. This same document states in the section entitled “Programming of the Editorial Line, Spirituality and Volunteerism” that programming may include “human promotion programs with issues regarding the family, education, health, social and cultural problems.” App. Ex. No. 3. There is no testimony in the record as to how the “human promotion programs” resemble “public worship, Sunday schools and religious instruction.” The totality of the testimony in this case is contained in 10 pages of

transcript. It is simply not enough for me to determine that the broadcasting on ABC Corporation is exclusively religious or that the programming on ABC Corporation consists of what the Illinois courts have determined is a religious purpose.

Moreover, ABC Corporation has not met its burden to show that the broadcasting is not used with a view toward profit. “The Guideline Principles” for the ABC Corporation Project require that each entity “guarantee the correct progress of profit and loss statements and clear use of the donations through organization of an efficient, competent and scrupulous management of the activity, assuming the obligation to provide for an annual audit of the administration by an outside organization specialized in auditing and send the final financial statement and budget to the administration ...” App. Ex. No. 3. However, no profit and loss statement, final financial statement or budget were offered into evidence by ABC Corporation.

Broadcasting on ABC Corporation is only available with a “C band radio” or on the internet. ABC Corporation uses a subcarrier frequency and that subcarrier is only picked up on a C band radio. These radios are generally not commercially available but can be purchased from ABC Corporation. Tr. pp. 18-19. There is no testimony in the record as to the cost that ABC Corporation pays for these radios or the amount that ABC Corporation sells them for. The lack of financial information in the record of this case simply does not allow me to conclude that ABC Corporation’s broadcasting and sale of radios is not done with a view toward profit.

Based on the testimony and evidence admitted at the hearing, I recommend that the Department's determination denying the applicant a sales tax identification number be affirmed, and that ABC Corporation not be granted a sales tax identification number.

ENTER:

March 4, 2011

Kenneth J. Galvin  
Administrative Law Judge