

ST 00-27

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**

ABC CENTERS, INC.,

APPLICANT

v.

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

Docket No: 00 ST 0000

Sales Tax Exemption

**Kenneth J. Galvin
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Mr. Josephus Shepherd (CPA) on behalf of ABC, Inc; Mr. Shepard Smith, on behalf of the Illinois Department of Revenue.

SYNOPSIS: On May 20, 1999, ABC Center, Inc. (hereinafter “ABC” or “applicant”) wrote to the Illinois Department of Revenue (hereinafter the “Department”) to request that the Department issue it an 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.* On November 19, 1999, the Department denied ABC’s application. On March 6, 2000, ABC requested a review of the denial and on March 28, 2000, the Department again concluded that ABC did not meet the requirements of a tax-exempt organization. ABC protested the Department’s decision and requested a hearing, which was held on October 11, 2000, with testimony from Jane Doe, nurse, CEO and

founder of ABC, Mary Doe, administrative assistant, and John Doe, nurse and president and founder of Metro Service Providers Association.

The sole issue to be determined at the hearing was whether ABC qualified for an exemption identification number as “a corporation, society, association, foundation or institution organized and operated exclusively for charitable ... 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 denial be affirmed.

FINDINGS OF FACT:

1. The Department’s *prima facie* case, inclusive of all jurisdictional elements, is established by the admission into evidence of the Department’s denial of exemption dated November 19, 1999, and denial after a second review dated March 28, 2000. Tr. pp. 7-8; Dept. Ex. No. 1.
2. Jane Doe formed ABC after identifying a need for support services and housing for older people who are frail, or with mental and physical disabilities, and limited resources. Tr. pp. 10-11.
3. ABC was incorporated on February 16, 1999, with its stated purpose “to provide benevolent living arrangements for people in need of special residential facilities.” Tr. pp. 13-14; Applicant’s Ex. No. 1.
4. The people serviced by ABC have limited financial resources and are unable to sustain themselves without government funding or donations and supportive services. People are referred to ABC by churches, hospital emergency rooms, discharge planners, physicians and not for profit agencies in the community. Tr. pp. 14-15.
5. After a referral, Doe does a complete needs assessment of the person, including social service, physical and financial assessments. She also determines whether the person would be appropriately served by ABC’s housing program. There is no age restriction on the people served by ABC, although most of the residents are 55 or over. Tr. pp. 15, 41-42.

6. ABC focuses on low income, homeless or risk of homeless persons. Before being accepted by ABC, referrals are asked to make a monthly contributory payment. People on social security are usually asked to contribute 30% of their social security income. Low-income persons typically have worked for several years, but are now chronically ill. They are also asked to contribute a certain percentage of monthly income. Tr. pp. 16, 19.
7. ABC provides the following services: 24 hour monitoring, utilities, medical monitoring, peer, group and emotional support, medication reminder program, wellness and health classes, dietary services and nutritional education, transportation arrangements, housekeeping and laundry, social service referral and assistance, access to medical and psychiatric care, counseling, including addiction counseling. Staff is on duty 24 hours a day, seven days a week. Tr. pp. 17-18, 19, 35-36; Applicant's Ex. No. 2.
8. On December 9, 1999, the Board of Directors of ABC adopted a resolution stating that ABC would "propose to maintain the residency of tenants once they are admitted to the [Center] even when the tenants become financially unable to pay." The policy of ABC "is to seek to obtain grants and funding to cover the costs of tenants who are unable to pay after they have been admitted to the Center." Tr. pp. 20-21, 29-30; Applicant's Ex. No. 3.
9. The "Agreement Between Resident and Facility" states that "[i]n consideration of payment of monthly rate" the facility agrees to provide the resident with room and board, bedding, linen, laundry services and such personal services as may be determined to be legally and reasonably required." Tr. p. 61; Dept. Ex. No. 2.
10. The section of the Agreement entitled "Conditions Under Which the Facility Will Terminate Resident's Stay" formerly listed "The Resident fails to pay" as a condition. This was omitted from the Agreement after the Board's adoption of the resolution on December 9, 1999. The Agreement now states: "Once admitted, if resident is willing but unable to make payment their residency will be maintained/supported through fund raising, donations and grant funding." Tr. p. 61; Dept. Ex. No. 2.
11. ABC has eight staff members. Two house monitors are paid. The rest of the staff is unpaid. Ms. Doe and the Board of Directors are not paid. Tr. pp. 22, 24.

12. ABC's unaudited financial statement for the period February, 1999, through December, 1999, shows total revenue of \$52,030. Of this amount, \$51,530 came from "Fees from Residents," which is mainly social security income, and \$500 came from "Contributions/Donations." "Total Expenses" for the period were \$71,535, resulting in a "Excess of Expenses over Revenue" of \$19,505. Tr. pp. 22-24, 28, 33; Applicant's Ex. No. 4.
13. ABC is exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code. Tr. pp. 24-25; Applicant's Ex. No. 5.
14. ABC is a member of Metro Service Providers Association. Metro brings service providers together in order to build an agency infrastructure. Members share information and collaborate with regard to grants, available resources and funding. Membership comes from the south and west sides of Chicago and south suburban area. Metro also enlists guest speakers to advise the members as to how to apply for grants. Tr. pp. 51, 58.

CONCLUSIONS OF LAW:

An examination of the record establishes that ABC has not demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant an exemption from sales tax. Accordingly, under the reasoning given below, the determination by the Department denying the applicant a sales tax exemption number should be affirmed. 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 charitable...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, 231 (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).

In Methodist Old People’s Home v. Korzen, 39 Ill.2d 149 (1968), the Illinois Supreme Court outlined several factors to be considered in assessing whether an organization is actually 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; (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. The above factors are guidelines for assessing whether an institution is a charity, but are not definitive requirements. DuPage County Board of Review v. Joint Comm’n on Accreditation of Healthcare Organizations, 274 Ill.App.3d 461 (2d Dist. 1995).

Applying the guidelines from Methodist Old People’s Home, I find that the applicant has not presented clear and convincing evidence that it is, in fact, a charitable organization. One of the guidelines for determining if an organization qualifies as a charity is that its funds must be derived mainly from public and private charity. ABC’s unaudited financial statement for the period February, 1999, through December, 1999, shows that 99% of ABC’s funding is composed of “Fees from Residents.” Applicant’s Ex. No. 4.

Testimony at the hearing indicated that ABC was seeking to increase its funding from government and charitable sources. ABC has applied for funding from Supportive Housing Programs, Corporation for Supportive Services, and The Research Foundation. Tr. pp. 46-47. However, according to Ms. Mary Doe, “there have not been any decisions yet.” Tr. p. 48. Ms. Doe was asked: “You haven’t had any fund-raising for this particular organization?” She responded: “No, we haven’t. Not at this particular time.” Tr. p. 34.

ABC has failed to prove that it derived its funds “mainly” from private and public charity. With 99% of ABC’s funding coming from residents, and no other sources of funding shown, one of the guidelines of Methodist Old People's Home is completely unmet. During the evidentiary hearing, ABC argued that since it is a start up organization, it should be treated more leniently in assessing whether it should be exempt from taxation. Tr. pp. 71-72. Although, it is recognized that securing alternative sources of funding may be a time consuming endeavor, exemptions must be “strictly construed” and “resolved in favor of taxation.” Van’s Material Co. Inc. v. Department of Revenue, 131 Ill.2d 196 (1989).

Based on the testimony and evidence admitted at the hearing, I also conclude that the benefits derived from ABC are not dispensed to an indefinite number of persons. ABC focuses on low income and homeless people. When a person is referred to ABC, a needs assessment, including a financial assessment is completed. Before a person is accepted as a resident, they must sign an agreement that they will contribute up to 30% of their monthly income to ABC. Ms. Doe was asked the following question: “Also to their financial [parameters], you need the people to pay money otherwise you can’t stay in business; is that correct?” She responded: “To a certain degree, yes.” Tr. p. 32. Any charity dispensed by ABC is dispensed only to those who can initially make the required monthly contribution. Although charging fees and rendering benefits does not destroy the charitable nature of the organization, this is only true to the extent that the organization also admits persons who need and seek the benefits offered but who are unable to pay. Small v. Pangle, 60 Ill. 2d 510 (1975). There was no evidence or testimony that any referrals who were unable to contribute were accepted for residency.

ABC argues that the above situation is remedied by the resolution adopted by the Board of Directors on December 9, 1999, which states that once a resident is admitted, they can maintain their residence even if they become financially unable to pay. Applicant’s Ex. No. 3. The “Agreement Between Resident and Facility” was changed to state that if a resident is unable to make payment, “their residency will be maintained/supported through fund raising, donations and grant funding.” Dept. Ex. No. 2. Although this resolution may have an impact on residents once they are admitted, it does not change the fact that those who cannot initially make the required monthly contribution are not accepted for residency.

The resolution and the corresponding change in the Agreement were not completely explained at the evidentiary hearing. There was no testimony at the hearing as to how many residents, if any, were not currently contributing. The Agreement states that if a resident is unable to contribute, his residency will be

maintained through “fund raising, donations and grant funding.” Dept. Ex. No. 3. Testimony at the hearing and the financial statement admitted as evidence show that only \$500 has been received from “Contributions/Donations.” It would appear then that ABC can currently cover residents who are unable to contribute only up to a total amount of \$500. In the future, those unable to contribute may be allowed to remain as residents according to the resolution, but only to the extent of ABC’s outside funding. This is not dispensing charity to all who need it because a resident who is unable to contribute may be asked to vacate if there is no anticipated source of outside funding. In this respect, ABC places obstacles in the way of those who need and would avail themselves of its charity, because a resident’s ability to stay on after they are unable to contribute is directly related to ABC’s ability to locate funding from alternative sources. According to testimony at the evidentiary hearing, no funding from grants or charities has yet been secured.

ABC may be reducing the burden on government by caring for and housing contributing residents, who might otherwise be relying on the government for their housing. ABC has not made a profit and Ms. Doe and the Board of Directors are not paid. Two staff members are paid, but “Salaries/Consultants” Expense on the financial statement totaled \$14,808. ABC is not providing a gain or loss in a private sense to any person connected with the organization. However, in balancing these characteristics favorable to assessing ABC as a charitable organization against the characteristics discussed above, I must conclude that ABC has failed to prove that it is a charitable organization.

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

ENTER:

Kenneth J. Galvin

November 13, 2000