

ST 02-5

Tax Type: Sales 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)	
)	Docket No. 01-ST-0000
v.)	
)	
ABC MEDICAL REGISTRIES, INC.)	Claim for Exemption
Taxpayer)	

RECOMMENDATION FOR DISPOSITION

Appearances: Kent Steinkamp, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Hugh Drake of Brown, Hay, and Stephens for ABC Medical Registries, Inc.

Synopsis:

The ABC Medical Registries, Inc. (“taxpayer”) applied to the Department of Revenue (“Department”) for an exemption identification number so that it could purchase tangible personal property at retail free from the imposition of use and retailers’ occupation taxes. The Department denied the application, and the taxpayer timely protested the denial. An evidentiary hearing was held during which the sole issue presented was whether the taxpayer is organized exclusively for charitable 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)). After reviewing the record, it is recommended that the Department’s decision be reversed.

FINDINGS OF FACT:

1. The taxpayer is a non-profit corporation that was incorporated in California on October 27, 1992. The taxpayer received its Certificate of Authority to conduct business in Illinois on March 26, 1999. (Taxpayer Ex. #2, 4; Tr. pp. 13-14)

2. The taxpayer is exempt from federal and Illinois income tax pursuant to section 501(c)(3) of the Internal Revenue Code. (Taxpayer Ex. #6; Tr. p. 15)

3. The taxpayer does not have any capital stock or shareholders. (Taxpayer Ex. #9; Tr. p. 15)

4. The taxpayer receives its funds primarily from grants and contracts from the federal government and holds the funds in trust for the purposes expressed in its mission statement and governing documents. (Taxpayer Ex. #9; Tr. pp. 16-17)

5. The taxpayer's members pay a fee of \$150 a year. If an organization is unable to pay the fee, they may access the taxpayer's information via the internet but not through the taxpayer's direct mailing. If the information is requested, however, the taxpayer will mail the information to anyone without charging a fee. (Tr. pp. 39-40, 52-53)

6. During fiscal year 2000, the taxpayer received \$27,650 from its members, which was approximately 4.6% of the revenue received that year. During fiscal year 2001, the membership revenue was \$23,050, which was 3.3% of the total revenue. (Taxpayer Ex. #9; Tr. p. 17)

7. The taxpayer's mission statement and bylaws provide that the taxpayer is a professional organization that develops and promotes uniform data standards for cancer registration; provides education and training; certifies population-based registries; aggregates and publishes data from central cancer registries; and promotes the use of cancer surveillance

data and systems for cancer control and epidemiologic research, public health programs, and patient care to reduce the burden of cancer in North America. (Taxpayer Ex. #7, 10)

8. The taxpayer basically performs five functions: (1) it sets standards for the collection and compilation of cancer incidence data; (2) it provides training concerning the standards and the collection of data; (3) it certifies the registries that meet the national standards; (4) it aggregates and evaluates the data; and (5) it promotes the use of the data in research and patient care. (Tr. pp. 25-26)

9. The taxpayer was formed because the founders saw a need for the standardization of cancer incidence data. The standardization of the data is necessary in order to compile and aggregate the information. The same definitions and codes must be used so that the information can be aggregated at a local, regional, and national level. The standards allow for the comparison of the data and the analysis of trends. (Tr. pp. 26-27; 67)

10. The taxpayer has four classes of membership: (1) full member organizations are central registries and include state registries, regional registries within some states, and registries within provinces in Canada; (2) individual members are those persons who are not currently working in a member organization who show commitments and interests that are consistent with those of the taxpayer; (3) sponsoring member organizations are organizations that are primarily involved in cancer control prevention and research; and (4) sustaining member organizations are organizations interested in promoting the purposes of the taxpayer.. (Tr. p. 22-24; Taxpayer Ex. #7, 12, 13)

11. A cancer registry collects information on every newly diagnosed cancer case within its jurisdiction. The purpose of a cancer registry is generally to provide information for the

public to use for research, cancer control and intervention, and the development of public policy. The local law in every jurisdiction defines the purpose of the registry. (Tr. pp. 59-60)

12. The Illinois State Cancer Registry (“ISCR”) is a division of the Department of Public Health. The ISCR collects data from several institutions that report the information: hospitals, ambulatory surgical treatment centers, and free-standing radiation treatment centers. (Tr. p. 73)

13. The ISCR uses the taxpayer’s standards when it compiles cancer incidence information. It also requires the institutions that report cancer data to the registry to use the taxpayer’s standards. (Tr. p. 75)

14. Without the taxpayer’s standards, the ISCR would have to convert all the data that it receives to one standard in order to evaluate and analyze the data. This conversion would be costly and time-consuming. (Tr. pp. 76-77)

15. The ISCR sometimes shares data with other states. Without the taxpayer’s standards for the collection of the data, each state would follow different standards and would need to convert the data to accomplish its goals. (Tr. p. 80)

16. The collection of cancer incidence data by the ISCR allows the registry to monitor trends and detect potential public health problems. (Tr. p. 74)

17. The taxpayer is the only organization that has established national standards for collecting cancer information. When another organization would like the taxpayer to add a new standard or include a new variable, the taxpayer develops a consensus from the other organizations in order to set the new standard. (Tr. p. 28)

18. Because the diagnosis and care of cancer is a rapidly evolving field, the standardization and aggregation of the data allows a practitioner to more easily compare his treatment with those of other practitioners that are being tested elsewhere. It also allows for

easier diagnosis and treatment of new or rare cancers. Public entities can use the aggregated data to target or prioritize certain populations. (Tr. pp. 29-30, 44)

19. Because medical care practices change over time, the standards that the taxpayer uses to collect the data also change. As the standards are revised, the taxpayer continues to train the registries as to how to collect the information and integrate it into their operations. (Tr. p. 40)

20. The taxpayer conducts various workshops concerning its standards and the collection of data. The workshops are attended by the taxpayer's members. Although a non-member has never requested to participate, the taxpayer has never denied anyone access to the workshops. (Tr. pp. 41, 66)

21. The taxpayer's training is for anyone who is involved in the collection of cancer registry data or the use of cancer incidence data. (Tr. p. 65)

22. The information that the taxpayer collects is accessible to anyone through the internet. The taxpayer will also mail the information to anyone without charging a fee. (Tr. pp. 38-39)

23. Some of the data that is collected from an individual patient includes age, race, date of diagnosis, residence, time of diagnosis, sex, and information that describes the tumor. The taxpayer is also expanding into collecting more treatment information and survival information. (Tr. p. 69)

24. The taxpayer makes the local cancer registry's collection of data more meaningful because it becomes a piece of the taxpayer's infrastructure. (Tr. pp. 64-65)

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 of the Act provides a list of tangible personal property that is exempt from the 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 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 (35 ILCS 120/1 *et seq.*) contains a similar provision. (See 35 ILCS 120/2-5(11)).

The Department’s initial tentative denial of the taxpayer’s claim for an exemption identification number is presumed to be correct, and the taxpayer 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, 459 (2nd Dist. 1995); Clark Oil & Refining Corp. v. Johnson, 154 Ill.App.3d 773, 783 (1st Dist. 1987). 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). The taxpayer must present sufficient documentary evidence to support its claim. Id. It is well-settled that tax exemption provisions are strictly construed and all doubts are resolved in favor of taxation. Heller v. Fergus Ford, Inc., 59 Ill.2d 576, 579 (1975).

In order to reach a finding that the taxpayer is organized and operated exclusively for charitable purposes, the following four factors are considered:

1. Whether the benefits derived are for an indefinite number of persons, 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 and 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, does not provide gain or profit in a private sense to any person connected with it, and 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
4. Whether the exclusive (primary) use of its property is for charitable purposes.

Methodist Old Peoples Home v. Korzen, 39 Ill.2d 139, 156-57 (1968) These factors are not requirements but are guidelines to be considered in assessing an institution's charitable status.

DuPage County Board of Review v. Joint Commission on Accreditation of Healthcare Organizations, 274 Ill.App.3d 461, 468 (2nd Dist. 1995)

The Department argues that the taxpayer is a professional organization whose members are the primary beneficiaries of its activities, and therefore the taxpayer is not a charitable organization because it does not benefit an indefinite number of people. The Department refers to its regulation, which provides in 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 their 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 or educational purposes, even though such organizations may engage in some charitable and educational work. The same conclusion applies to the American Legion, Veterans of Foreign Wars, Amvets, the Daughters of the American Revolution and other similar nonprofit patriotic organizations.” 86 Ill. Admin. Code §130.2005(g)

The Department claims that the taxpayer's activities and publications enhance the ability of the taxpayer's members to perform studies to detect causes of cancer, and therefore the members of the taxpayer are the direct beneficiaries while the general public benefits only indirectly. The Department notes that the taxpayer's activities must directly benefit society in order to warrant a

charitable tax exemption. (See Gas Research Institute v. Department of Revenue, 154 Ill.App.3d 430, 437 (1st Dist. 1987). The Department contends that the taxpayer's activities simply do not reach the level of a general benefit that warrants allowing the taxpayer to make exempt purchases. The taxpayer establishes standards for collecting data and publishes the data once it is compiled. The Department argues that the purpose of the taxpayer is to make the registries' data collection more effective and meaningful. Because the taxpayer's activities directly benefit its members, the Department claims the taxpayer is not entitled to the exemption.

The taxpayer argues that everything that it does is done with the purpose of reducing cancer incidence in North America, and this directly benefits the public. The taxpayer contends that the usefulness of the registries' information is limited without the standards that the taxpayer establishes. The taxpayer notes that it is the only organization that has established standards for collecting cancer information and the only organization that compiles the information for North America. The taxpayer allows the public free access to its publications and the data that is on its web site. The taxpayer claims that its activities facilitate the diagnosis and treatment of cancer. The taxpayer also argues that its activities are integral to developing public policy for the care and prevention of cancer.

Moreover, the taxpayer contends that its activities reduce the burdens of state government because the Illinois Health and Hazardous Substances Registry Act (410 ILCS 525/1 *et. seq.*) mandates the collection of cancer incidence data, and the ISCR uses the taxpayer's standards to collect its data. The taxpayer notes that the Illinois Department of Public Health promulgated regulations that specifically reference the taxpayer (see 77 Ill. Admin. Code §840.115(i)(l)). In addition, the taxpayer states that an exemption was granted to the organization in Friends of Israel Defense Forces v. Department of Revenue, 315 Ill.App.3d 298 (1st Dist. 2000) even

though that organization is not explicitly mentioned in the Illinois Administrative Code nor cited by any Illinois governmental body. The taxpayer argues that if an organization that supports a foreign military is entitled to an exemption, then the taxpayer should also be entitled to an exemption because its primary purpose is to reduce cancer.

The evidence presented supports a finding that the taxpayer is entitled to an exemption number because it is a charitable organization. First, the taxpayer's activities reduce the burdens of the Illinois government. As the taxpayer has indicated, the Illinois government is required to collect cancer incidence data. Section 2 of the Illinois Health and Hazardous Substances Registry Act ("Act") provides in part as follows:

"(a) The General Assembly finds that: * * * (iv) it is the obligation of the State government to inform and protect the citizens of Illinois by developing a comprehensive and integrated data system on hazardous substances and public health. * * *

(c) In particular, the purpose of the collection of cancer incidence information is to: (1) monitor incidence trends of cancer to detect potential public health problems, predict risks and assist in investigating cancer clusters; (2) more accurately target intervention resources for communities and patients and their families; (3) inform health professionals and citizens about risks, early detection and treatment of cancers known to be elevated in their communities; and (4) promote high quality research to provide better information for cancer control and to address public concerns and questions about cancer." (410 ILCS 525/2)

An employee of the ISCR testified that the ISCR uses the taxpayer's standards when it compiles cancer incidence information and that it requires its reporting institutions to follow the same standards. Without the taxpayer's standards, the ISCR would have to establish its own standards or convert all the data that it receives to one standard in order to evaluate and analyze the data. This process would clearly be an additional burden on the ISCR because it takes an enormous amount of effort to standardize the data. (Tr. p. 67) The taxpayer's national standards also benefit the ISCR when it shares data with other states because the standards again allow the

ISCR to avoid the time-consuming process of converting the information. The taxpayer's activities therefore allow the ISCR to more effectively perform its duties.

In addition to reducing the burdens of Illinois government, the taxpayer's activities directly benefit an indefinite number of people. Although the taxpayer's activities make the information from the individual registries more useful and therefore benefit its members, the taxpayer's ultimate function of collecting cancer incidence data directly benefits the general public. Section 2(c) of the Act specifically lists the purposes of collecting the information, and all of the purposes apply equally to the national collection of the data as well as to the state collection. The purposes indicate that every person directly benefits from the collection of the information because the data is used to protect the public from the risks of cancer and to enhance early diagnosis and treatment of cancer. This serves the ultimate goal of reducing cancer in North America, which benefits everyone who lives here.

The Gas Research Institute case relied on by the Department is distinguishable from the present case. In that case, the organization's stated purpose was to fund, encourage, and conduct research and development of natural gas resources and uses. The court found that the primary purpose of the organization was to enhance the position of natural gas in the energy marketplace, and any benefits to the public were incidental. In the present case, the primary purpose of the taxpayer is to reduce the incidence of cancer in North America, which directly benefits the public. Although the Department argues that the taxpayer's activities make the data of the registries more meaningful, the information only has real meaning if it is used to prevent or treat cancer. This is not an incidental benefit to the public.

The record supports a finding that the taxpayer satisfies the remaining guidelines in Methodist Old Peoples Home. The taxpayer has no capital stock or shareholders and does not

profit from its activities. The taxpayer dispenses its information to everyone who needs it or applies for it, and the taxpayer does not place obstacles of any kind in the way of those who need and would avail themselves of the benefits that it dispenses. The taxpayer does not provide gain or profit in a private sense to any person connected with it. In addition, the primary purpose for which the taxpayer's property is used is for charitable purposes.

Recommendation:

For the foregoing reasons, it is recommended that the taxpayer receive an exemption identification number.

Linda Olivero
Administrative Law Judge

Enter: January 4, 2002