

**ST 07-6**

**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**

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**ABC REUNION,**

**Applicant**

**v.**

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

No. 06-ST-0000

John E. White,  
Administrative Law Judge

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**RECOMMENDATION FOR DISPOSITION**

**Appearances:**

*John Doe*, appeared *pro se*, for ABC Reunion; John Alshuler, Special Assistant Attorney General, appeared for the Illinois Department of Revenue.

**Synopsis:**

This matter arose after ABC Reunion (*ABC*) protested the Illinois Department of Revenue's (Department) denial of its application for an exemption identification number, pursuant to §§ 1g and 2-5(11) of the Retailers' Occupation Tax Act (ROTA), so it could make tax-free purchases of tangible personal property. The issue is whether *ABC* is an exclusively charitable organization.

The hearing was held at the Department's offices in Chicago. *ABC* presented evidence consisting of books and records and other documents, as well as the testimony of witnesses. I have reviewed that evidence, and I am including in this recommendation findings of fact and conclusions of law. I recommend that the Director finalize the denial previously issued.

**Findings of Fact:**

1. **ABC** was incorporated as an Illinois not-for-profit corporation in 2005. Applicant Ex. 3 (copy of **ABC**'s completed Illinois Secretary of State form NFP 102.10 (Articles of Incorporation, General Not-for-Profit Corporation Act)).
2. The Internal Revenue Service (IRS) determined that **ABC** was exempt from federal income tax pursuant to § 501(c)(3) of the Internal Revenue Code. Applicant Ex. 2 (copy of IRS determination letter).
3. XXXXX is President of **ABC**, and XXXX is its Secretary/Treasurer. Applicant Exs. 3, 7 (copy of November 4, 2005 letter from XXXXX to Department regarding application for exemption identification number); Hearing Transcript (Tr.) pp. 11-12 (testimony of **Doe**). **Doe** is **ABC**'s accountant. Applicant Ex. 7 (copy of November 4, 2005 letter from XXXXX to Department).
4. **ABC**'s purpose is "[t]o organize an annual dinner dance and to contribute the proceeds to a charitable organization." Taxpayer Ex. 3, p. 1; Tr. pp. 27-28 (**Doe**).
5. The reunion dinner dance operated by **ABC** annually was started by people who had lived in the **ABC** area of Anywhere and who, after moving away from the area, sought to get together regularly, and to have whatever proceeds from the dinner go to charity. Tr. pp. 27-28 (**Doe**); *see also* Applicant Ex. 11 (copy of undated letter announcing **ABC**'s 2006 annual reunion dinner dance).
6. **ABC** maintains a mailing list of persons who have attended its annual reunion in the past, and it uses that mailing list to issue announcements and invitations for upcoming reunions. Applicant Exs. 11-12 (copy of blank invitation response card for 2006 **ABC** reunion).

7. **ABC** prepared a profit and loss statement regarding its 2005 annual dance reunion, which also reflected its estimated profit and loss regarding its 2006 annual dance reunion. Applicant Ex. 8; Tr. pp. 23-24.

8. **ABC's** 2005/2006 profit/loss statement provided as follows:

<b>ABC ANNUAL DANCE REUNION ESTIMATED PROFIT AND LOSS</b>		
	Actual	Estimate
	2005	2006
Number of People	589	600
Cost per Person	75	80
Dinner Income	\$44,175	\$48,000
Expenses		
Dinner	26,406	27,000
Band	6,300	6,500
Mailings	1,050	1,170
Printing	1,370	1,500
Committee meetings	1,550	1,600
Wine for tables	430	470
Gratuities	500	500
Flowers	336	350
Cameras	175	200
Badges		500
Miscellaneous	816	1,010
Attorney fee	603	
IRS Determination fee	500	
<b>TOTAL EXPENSES</b>	<b>40,036</b>	<b>40,800</b>
<b>NET PROFIT</b>	<b>4,139</b>	<b>\$7,200</b>

Applicant Ex. 8.

9. On December 15, 2005, **ABC** contributed \$2,000 to the Children's Assistance Foundation (ECAAF). Applicant Ex. 9; Tr. p. 26 (**Doe**). The CAF is a public charity with a 50% deductibility limitation. Applicant Ex. 10 (copy of CAF flyer); Tr. p. 26 (**Doe**); *see also* <http://apps.irs.gov/portal/site/pub78/template> (web site for the IRS's searchable Publication 78, which publication is the IRS's list of organizations that it has determined to be exempt from federal income tax pursuant to § 501 of the United

States tax code) (search conducted on February 9, 2007).

10. **ABC** used the remaining amount of its net profit for 2005 for expenses, including a deposit on the hall and orchestra to be used for **ABC**'s 2006 annual dinner dance, as well as expenses for flyers and invitations. Tr. pp. 31-32 (**Doe**); Applicant's Ex. 8.

**Conclusions of Law:**

The ROTA exempts from retailers' occupation tax (ROT) receipts from a retailer's sales of tangible personal property to "a corporation, society, association, foundation, or institution organized and operated exclusively for charitable ... purposes ...." 35 ILCS 120/2-5(11). Since the receipts from the sale of such property are exempt from ROT, the purchaser's use of such property is also exempt from Illinois use tax (UT), pursuant to § 3-65 of Illinois' Use Tax Act (UTA). 35 ILCS 105/3-65. Effective on and after July 1, 1987, the Illinois General Assembly included into ROTA § 2-5(11) the express condition that "no entity otherwise eligible for this exemption shall make tax-free purchases unless it has an active identification number issued by the Department."

This matter involves **ABC**'s application for an exemption identification number, and the Department's denial of that application. Because **ABC** seeks the exemption, it bears the burdens of proof and production to show that it is organized and operated exclusively for charitable purposes. Chicago Bar Ass'n. v. Department of Revenue, 163 Ill. 2d 290, 300, 644 N.E.2d 1166, 1171 (1994). The guidelines set forth in Methodist Old Peoples Home v. Korzen, 39 Ill. 2d 149, 233 N.E.2d 537 (1968), are applicable in considering whether an entity is exempt from Illinois use tax and retailers occupation tax. Wyndemere Retirement Community v. Department of Revenue, 274 Ill. App. 3d 455, 459, 654 N.E.2d 608, 611 (2d Dist. 1995). Those guidelines ask:

1. Whether the benefits taxpayer provides are for an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare, or which, in some way, reduces the burdens on government;
2. Whether taxpayer's organization has any indices of a for-profit structure, such as capital, stock, or shareholders;
3. Whether taxpayer derives its funds mainly from private and public charity, with the funds held in trust for the objects and purposes expressed in taxpayer's corporate charter;
4. Whether the charity is dispensed to all who need and apply for it, without providing gain or profit in a private sense to anyone connected with taxpayer;
5. Whether taxpayer places any obstacles in the way of those seeking benefits from it; and
6. Whether taxpayer is exclusively operated for charitable purposes.

See Wyndemere, 274 Ill. App. 3d at 459-60, 459, 654 N.E.2d at 611-12.

As to the first criteria, there appears to be two types of benefits that **ABC** provides. The first type is the reunion itself, and the second type is the donation of excess revenues from the reunion that **ABC** makes to a charitable organization. There is no evidence that the reunion dinner dance, itself, constitutes charity. The reunion is, in essence, a party, and it is not open to an indefinite number of persons. Rather, it is open only to those who pay the price of admission. Applicant Exs. 8, 11-12. Further, there is no evidence that the primary purpose of the party was to persuade the invitees to an educational or religious conviction, for their general welfare, or which, in some way, reduced the burdens on government. Wyndemere, 274 Ill. App. 3d at 459-60, 459, 654 N.E.2d at 611-12. The evidence reflects that the primary purpose of the reunion dinner dance was to provide food, drink, dancing and musical entertainment to paying invitees. Applicant Exs. 3, 11.

Regarding the second criteria, the record establishes that **ABC** has the organizational structure of a charitable organization. Applicant Ex. 3. Thus, it satisfies the second criteria.

Moving on to the third criteria, the only financial books and records admitted into evidence is the profit/loss sheet for the 2005 and 2006 reunions. Those books and records show that **ABC** had income in the amount of \$44,175, and total expenses of \$40,036. Applicant Ex. 8. **ABC**'s 2005 income, however, was not earned from public or private charity. Rather, it derived those funds from the 589 paying invitees to the 2005 reunion. *Id.* Those 589 ticket purchasers did not donate \$75 each as an act of charity; they each bought a ticket to a party in which they, themselves, would take part. *See* Applicant Exs. 11-12. Thus, **ABC** does not satisfy the third criteria.

Regarding the fourth and fifth criteria, and even if I were to consider the act of producing a party to be charity — which, under the circumstance, I do not — there is no evidence that **ABC** provided that charity to all who sought to attend. There is no entry in its profit/loss sheet to account for tickets that **ABC** made available to give to persons that could not afford them. Applicant Ex. 8. The obstacle that **ABC** placed before anyone that might have wanted to take part in the reunion was the ticket price. *Id.*

After considering all of the evidence and facts set forth in the record, I conclude that **ABC**'s donation of some of the remaining net profit from the reunion was a charitable act, but it was a single act that was incidental to its primary purpose of holding an annual party that brought entertainment and fellowship to those willing to pay the ticket price. **ABC**'s single donation of \$2,000, which was less than half of **ABC**'s net

income for 2005, and less than 5% of its annual revenue, does not make it an organization that is organized and operated exclusively for charitable purposes.

Finally, **ABC** has also argued that it should be issued an exemption identification number because ROTA § 2-5(11) also exempts from tax “a not-for-profit corporation ... that has no compensated officers or employees and that is organized and operated primarily for the recreation of persons 55 years of age or older.” Tr. pp. 30-31 (**Doe**). **Doe** testified that **ABC** has no compensated officer or employees and that most of the people that purchased tickets for **ABC**'s annual dinner dance were over 55. *Id.* There was no documentary evidence offered to support the latter point, and **ABC**'s organizational documents disprove **Doe**'s argument on the former point. **ABC**'s articles of corporation sets forth its purpose, and that purpose is not to provide recreation for persons 55 years of age or older. Applicant Ex. 3.

**Conclusion:**

I conclude that **ABC** does not meet the criteria statutory required for exemption under 35 **ILCS** 120/2-5(11). Therefore, I recommend that the Director finalize the Department's tentative denial of **ABC**'s application for an exemption identification number.

Date: 2/13/2007

John E. White  
Administrative Law Judge