

ST 08-10

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**

v.

ABC, INC.

Taxpayer

Docket # 07-ST-0000

Claim for Exemption Number

RECOMMENDATION FOR DISPOSITION

Appearances: Robin Gill, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Michael T. Mahoney of Michael T. Mahoney, Ltd. for ABC, Inc.

Synopsis:

ABC, Inc. (“taxpayer”) applied to the Department of Revenue (“Department”) for an exemption identification number in order to purchase tangible personal property at retail free from the imposition of retailers’ occupation taxes and use taxes. The Department denied the request, and the taxpayer timely protested the denial. An evidentiary hearing was held during which the only issue presented was whether the taxpayer is organized and operated 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)). The taxpayer's sole purpose is to present an annual fireworks display in Anywhere on the Fourth of July, and the taxpayer contends that this is a charitable enterprise. 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 non-profit corporation that was organized on June 28, 2004. The taxpayer has no capital, capital stock, or shareholders. (Taxpayer Ex. #1, pp. 4-14; Tr. p. 11)
2. The articles of incorporation state the taxpayer's purposes as follows:

The corporation is organized exclusively for charitable, educational, religious or scientific purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code. The corporation shall be strictly limited in its purpose to organize, plan and present an annual fireworks celebration for the citizens of the City of Anywhere. (Taxpayer Ex. #1, p. 4)
3. On the day after the Fourth of July, the taxpayer begins to raise money for the following year's celebration. The taxpayer receives donations from citizens and businesses, and it also has two or three fundraisers during the year. The income is used to purchase fireworks and display them on the Fourth of July. (Taxpayer Ex. #1; Tr. p. 12)
4. The taxpayer's un-audited income and expense statement for the period of January 1, 2007 through November 30, 2007 shows the following:

Income	
Donations Received	\$ 11,496.56
Fundraisers	7,147.16
Interest Income	578.96
Uncategorized	<u>35.00</u>
Total Income	19,257.68

Expenses	
Advertising	51.50
Fireworks purchase	15,800.00
Miscellaneous	<u>696.85</u>
Total Expenses	16,548.35
Net income over expenses	\$ 2,709.33 (Taxpayer
Ex. #1, p. 17)	

5. The miscellaneous expense includes \$500 for the use of an island on the Illinois river from which the fireworks are displayed. The island is directly across from the Anywhere city park. The expense also includes \$100 for the use of a sound system for people to speak at the celebration. (Taxpayer Ex. #1, p. 21; Tr. pp. 13-14)
6. Prior to the display of the fireworks, a program is presented at the Anywhere city park during which the area's state representative speaks. There are also several patriotic speakers to recognize veterans. There is no cost for anyone to attend the program or watch the fireworks. (Tr. p. 14)
7. The taxpayer does not have employees, and no one who works for the taxpayer is compensated. (Taxpayer Ex. #1, pp. 16-21; Tr. pp. 11-12)

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(4) of the Act provides a list of tangible personal property that is exempt from the tax, and includes the following:

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 ("ROTA") (35 ILCS 120/1 *et seq.*) contains a similar provision. See 35 ILCS 120/2-5(11). The term "exclusively" is not interpreted literally to mean the entity's sole purpose; it is construed to mean the primary purpose but not merely an incidental or secondary purpose. Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430, 436 (1st Dist. 1987). Whether an institution has been organized and is operating exclusively for an exempt purpose is determined from its charter, bylaws and the actual facts relating to its method of operation. Du Page County Board of Review v. Joint Commission on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461, 468-469 (2nd Dist. 1995).

When analyzing whether the taxpayer is organized and operated exclusively for charitable purposes, 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 their 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, 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 primary purpose of the organization, not any secondary or incidental purpose, is charitable. Methodist Old Peoples Home v. Korzen, 39 Ill. 2d 139, 156-57 (1968); Wyndemere Retirement

Community v. Department of Revenue, 274 Ill. App. 3d 455, 459 (2nd Dist. 1995). These factors are balanced with an overall focus on whether and how the organization serves the public interest and lessens the State's burden. See Du Page County Board of Review, *supra*.

The Department's 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, *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). The taxpayer must present sufficient documentary evidence to support its claim. *Id.*

The Department contends that the primary purpose of the taxpayer's organization is not charitable. The Department argues that although the taxpayer's activities are commendable and have a public value, they cannot be characterized as exclusively charitable and do not meet the guidelines established in Methodist Old Peoples Home, *supra*. The Department also believes that the taxpayer does not relieve a governmental burden and the fireworks are not a charitable benefit to the public.

Section 130.2005(i)(2) of the Department's regulations concerning the retailers' occupation tax provides as follows:

The Supreme Court has stated that a charitable purpose may refer to almost anything which promotes the well-being of society and which is not forbidden by law; but to qualify as a charity, the purchaser must be organized and operated to benefit an indefinite number of the public.

There may be restrictions on the group to be benefited (such as an organization for women, for children, for the aged, etc.), but the service rendered to those eligible for benefits must, nevertheless, in some way relieve the public of a duty which it would have to such beneficiaries or otherwise confer some benefit on the public. 86 Ill. Admin. Code §130.2005(i)(2)

The taxpayer argues that according to the decision in Friends of Israel Defense Forces v. Department of Revenue, 305 Ill. App. 3d 298 (1st Dist. 2000), the taxpayer is not required to show that it is both relieving a governmental burden and providing a benefit to the general public. Nevertheless, the taxpayer believes it meets both requirements. First, the taxpayer contends it is entitled to the exemption because it confers a benefit upon the public at large. The Fourth of July is a significant date, and celebrating it with fireworks is a tradition in our country. Watching fireworks on the Fourth of July is an important part of our culture, and it is important to the citizens of Anywhere. The taxpayer, therefore, contends that it is providing a benefit to the general public.

In addition, the taxpayer claims that it relieves the City of Anywhere of a legal burden to provide a fireworks display. The citizens expect to watch fireworks as part of the Fourth of July holiday. The taxpayer asserts that providing fireworks is similar to fixing potholes in the street; the citizens would be equally upset about cancelling the fireworks as they would about failing to fill a pothole. According to the taxpayer, the city would have to levy taxes to provide the same services to the citizens of Anywhere, and therefore the taxpayer is relieving a burden that would otherwise exist for the City of Anywhere.

The significance of our Fourth of July holiday is undisputed. It is Independence Day, commemorating our country's independence from Great Britain. Public and private celebrations take place throughout the country, and the public ones often include parades,

political speeches, and fireworks. The taxpayer indicated that in addition to the fireworks, the Anywhere celebration includes a speech from the area's state representative as well as several patriotic speakers to recognize veterans. (Tr. p. 14) The Fourth of July is undeniably a patriotic holiday, and providing free fireworks to celebrate our nation's birthday is primarily a patriotic enterprise.

Our Supreme Court has found that a patriotic purpose is not a charitable one. In Rogers Park Post No. 108 American Legion v. Brenza, 8 Ill. 2d 286 (1956), court stated that the corporation was "organized to carry out the purposes and objectives of the American Legion, to foster love of country, respect for our civil institutions and to benefit and afford comradeship to its members." *Id.* at 291. The court added "[t]hese purposes and objectives are patriotic, laudable and public spirited. Nonetheless, they do not constitute charitable purposes, however desirable or however beneficial." *Id.* In the present case, the taxpayer's primary activity is patriotic, laudable, and public spirited, but despite the beneficial nature of the activity, it is not a charitable benefit for purposes of warranting a tax exemption.¹

Moreover, the taxpayer has not established that the government has a legal burden to provide a fireworks display. While a municipality has an obligation to maintain roads pursuant to the Illinois Municipal Code (65 ILCS 5/1 *et seq.*), a similar requirement does not exist for providing fireworks on the Fourth of July. Although the taxpayer provides an event that is greatly appreciated by many people in the community, if this event was not provided by the taxpayer, the government does not have a legal obligation to provide it.

¹ Although the Rogers Park case concerns a charitable exemption from property taxes, the factors that are used to analyze charitable exemptions from property taxes are the same as those that are used to analyze charitable exemptions from retailers' occupation taxes and use taxes. See Wyndemere, *supra*.

As previously stated, the taxpayer must prove by clear and convincing evidence that it is entitled to the exemption, and all doubts must be resolved in favor of taxation. See Wyndemere, *supra*. An entity must be organized and operated primarily for a charitable purpose in order to receive the exemption. *Id.* The taxpayer's activities, however, are primarily patriotic rather than charitable. In addition, providing fireworks on the Fourth of July is not a legal burden that would otherwise be left to the government. Because the taxpayer has not established that its purpose and activities are primarily charitable or that it relieves a government burden, the exemption must be denied.

Recommendation:

For the foregoing reasons, it is recommended that the taxpayer's request for an exemption identification number be denied.

Linda Olivero
Administrative Law Judge

Enter: August 18, 2008