

ST 08-12

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**

THE DEPARTMENT OF REVENUE OF THE STATE OF ILLINOIS) 07 ST 0000
) Sales Tax Exemption
)
v.)
)
THE ABC FOUNDATION TAXPAYER) Kenneth Galvin
) Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

Appearances: John Alshuler, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Mr. Charles M. Watkins, Webster, Chamberlain & Bean, for The ABC Foundation.

Synopsis:

The ABC Foundation (hereinafter “ABC” or “Taxpayer”) sought an exemption from the imposition of tax under the Illinois Retailer’s Occupation Tax Act (35 ILCS 120/1 *et seq.*) (“ROTA” or “ROT”) and the Illinois Use Tax Act (35 ILCS 105/1 *et seq.*) (“UTA” or “UT”) as an entity organized and operated exclusively for charitable purposes. 35 ILCS 120/2-5; 105/3-5. The Department denied ABC’s request twice, with ABC formally protesting and requesting a hearing following the issuance of the Second Denial of Sales Tax Exemption. A hearing was held in this matter on January 7, 2008, with testimony provided by XXX XXXXX, Vice-President of Finance and Administration for ABC, and XXXX XXXX, Controller for ABC. Following the submission of all evidence and a review of the record, it is recommended that this matter

be resolved in favor of the Department. The following Findings of Fact and Conclusions of Law are made in support of this recommendation.

Findings of Fact:

1. The ABC Foundation requested an exemption identification number (35 ILCS 120/1g) from the Department on the basis that it was exempt from taxes imposed by the ROTA and the UTA as an entity organized and operated exclusively for charitable purposes. The Department denied ABC's second request on August 18, 2006. Tr. p. 9; Dept. Ex. No. 1.
2. ABC was founded in 1973 with seed money from XXXX, XXXXX and XXXXX, who determined that they would like to create an organization that would present conservative ideas and conservative views to the public and to members of Congress. Tr. pp. 44-45.
3. ABC "is a research and educational institution – a think tank- whose mission is to formulate and promote conservative public policies based on the principles of free enterprise, limited government, individual freedom, traditional American values and strong national defense." Tr. pp. 53-54, 57-58; Taxpayer's Ex. No. 20.
4. ABC pursues its mission by "performing timely, accurate research on key policy issues, and effectively marketing these findings to its primary audiences who are members of Congress, key Congressional staff, policy makers in the Executive Branch, the nation's news media, and the academic and policy communities." ABC's vision "is to build an America where freedom, opportunity, prosperity and civil society flourish." Taxpayer's Ex. No. 21.

5. ABC was incorporated on February 16, 1973 under the District of Columbia's "Non-profit Corporation Act." Its purposes, *inter alia*, according to its Articles of Incorporation, are to 1) to conduct and sponsor studies and research on economic, social and other educational subjects; 2) to prepare and publish treatises, articles, newsletters, pamphlets, books and other educational materials and to distribute (by sale or otherwise) such materials to the public, schools, colleges, libraries and other interested persons and institutions; and 3) to conduct and sponsor forums, lectures, debates, and similar programs, and to prepare and distribute educational programs and materials for television and radio and other news media. Tr. p. 13; Taxpayer's Ex. No. 1.
6. ABC is exempt from federal income taxes as an entity described in Section 501(c)(3) of the Internal Revenue Code. Tr. pp. 64-66; Taxpayer's Ex. No. 21.
7. ABC's Articles of Incorporation state that "[T]he corporation is not to have members." Tr. p. 13; Taxpayer's Ex. No. 1.
8. ABC has the following twelve "Membership Levels." **Basic Member (\$25)**; "You receive our quarterly newsletter, briefings on critical issues and the chance to participate in important opinion surveys." **Supporting Member (\$50)**; "You receive our quarterly newsletter, briefings on critical issues and the chance to participate in important opinion surveys." **Congress and Culture Watchers Club Member (\$100)**; "In addition to basic membership benefits, you receive special mailings that keep you up-to-date on ABC's influential dealings with Congress, the White House and the media as well as our work on social and cultural issues." **Young President's Club Member (\$250)**; "As a conservative under 40 years of age, you will be invited

to both President's Club meetings each year in addition to the other benefits of a President's Club membership." **President's Club Member (\$1,000)**; "You may choose to receive any of the more than 200 publications produced each year. In addition, President's Club members are invited to two President's Club Meetings a year." **Executive Committee Member (\$2,500)**; "Executive Committee Members receive all President's Club benefits, plus invitations to two committee luncheons a year." **Premiere President's Club Member (\$5,000)**; "Premiere President's Club Members receive all the benefits of Executive Committee Members listed above." **Associate (\$10,000)**; "Membership includes all Executive Committee privileges, plus an invitation to the annual Leadership Conference and Board Meeting." **Corporate Associate (\$10,000)**; "Corporate Associates recognize that their support of ABC is an investment in smaller government, lower taxes, free trade, and regulations that make sense. Over 45 corporations representing industries that range from health care to defense to manufacturing support ABC's commitment to free enterprise. Membership benefits include the full range of ABC's publications, special corporate updates, invitations to ABC's annual meeting, and targeted briefings in Washington." **Executive Associate (\$25,000)**; "Executive Associates receive all of the benefits of Associates listed above." **Premiere Associates (\$50,000)**; "Premiere Associates receive all of the benefits listed above." **Founder (\$100,000)**; "Membership includes all Associates' benefits, plus invitations to private receptions and special events." Tr. pp. 13-15; Taxpayer's Ex. No. 2.

9. ABC's "Bylaws" state that the "[T]he Foundation shall not hold to any institutional point of view on public issues or legislation under consideration." "[N]o activities of

the Foundation shall propagandize or otherwise attempt to influence legislation; neither shall the Foundation participate in any political campaign of a candidate for public office.” (Article 2; Section 2) “[T]he Foundation shall operate as a nonpartisan, not-for-profit organization not under the direction or control of any other organization. No part of the net earnings of the Foundation shall inure to the benefit of any private individual.” (Article 2, Section 3) Tr. pp. 16-18; Taxpayer’s Ex. No. 3.

10. ABC maintains a mailing list of Republican, Democratic and independent Congressmen, senators, members of the Administration and members of various departmental agencies of the government. ABC sends research papers to the people on this list. Some Congressional offices have asked to be removed from the list. Tr. pp. 48-50, 56.

11. ABC publishes approximately 400 policy papers each year, all available on its Website. ABC’s lectures and symposiums are web cast via the Internet, archived on ABC’s website and sometimes covered live by C-Span. Tr. pp. 22-23.

12. ABC’s Website contains researchable “Policy Archives,” by date, issue and type. Issues are divided into “Domestic Issues,” including, *inter alia*, Agriculture, American Political Thought, Education, Federal Budget and Spending, Health Care, Labor, Religion and Civil Society, Taxes and Urban Issues, and Foreign Issues, including, *inter alia*, Africa, Ballistic Missile Defense, Homeland Security, Iraq War, Middle East, National Security and Defense, Public Diplomacy and Worldwide Freedom and Human Rights. Tr. pp. 22-24; Taxpayer’s Ex. No. 4.

13. ABC's Website contains the following message: "Support our Efforts. Help support ABC's efforts to spread conservative ideas. Donate today." Tr. p. 44; Taxpayer's Ex. No. 4.
14. In 2007, ABC published "Why States? The Challenge of Federalism" by Eugene Hickok. This book is the first of a series of publications that discusses the principles that the country was based on and the balance the founding fathers tried to achieve between states' rights and the rights of the federal government. Tr. pp. 24-27; Taxpayer's Ex. No. 5.
15. ABC published the "2007 Index of Economic Freedom," in which 160 countries around the world are ranked on the basis of 10 different economic factors such as government regulation, taxation, and personal property rights and how free the country is in terms of its economy. The book is available on ABC's website and is distributed to universities and think tanks. Tr. pp. 27-30; Taxpayer's Ex. No. 6.
16. In 2006, ABC published "U.S. Policy in Northeast Asia," a speech given by Condoleezza Rice, as part of the B.C. Lee Lecture Series. Tr. pp. 30-31; Taxpayer's Ex. No. 7.
17. In 2007, ABC published "Treatment of Detainees and Unlawful Combatants: Selected Writings on Guantanamo Bay," which discusses the treatment of prisoners, their legal rights and whether the detainees are to be considered prisoners of war or some other classification. Tr. pp. 31-32; Taxpayer's Ex. No. 8.
18. In 2007, ABC published "Use and Abuse of the Family and Medical Leave Act; What Workers and Employers Say," which discusses the benefits of the Medical Leave Act and areas where the Act has been abused. Tr. pp. 32-33; Taxpayer's Ex. No. 9.

19. In 2007, ABC published “The Birth of the Administrative State; Where It Came From and What It Means for Limited Government,” and “What Separation of Powers Means for Constitutional Government” . These publications are part of ABC’s “First Principles Series,” which analyzes the background of what the founding fathers intended for the country and how their intentions have evolved. Tr. pp. 33-34; Taxpayer’s Ex. Nos. 10 and 11.
20. In 2007, ABC published the following printed versions of lectures given at the Foundation. “Who Leads the United Nations,” which discusses the current administrative structure of the U.N. and the intent for which that organization was founded. “Combating Insurgencies: Past, Present and Future,” which discusses the Iraq war and the war on terrorism. “Achieving Change: What We Can Learn from Margaret Thatcher,” which discusses the policies implemented by Margaret Thatcher to free up the economy. Tr. pp. 34-37; Taxpayer’s Ex. Nos. 12, 13 and 17.
21. In 2007, ABC published “Gang Crime: Effective and Constitutional Policies to Stop Violent Gangs,” , produced by the “Center for Legal and Judicial Studies” and the “Center for Data Analysis,” which discusses the national government’s role in fighting gang crime. Tr. pp. 36-37; Taxpayer’s Ex. No. 14.
22. In 2007, ABC published “The Pentagon’s Robots; Arming the Future,” which discusses the Pentagon’s use and development of robots to be used as part of military tactics of the future. Tr. p. 37; Taxpayer’s Ex. No. 15.
23. In 2007, ABC published “The Crisis in America’s Emergency Rooms and What Can Be Done,” concerning overcrowding and problems in American hospitals’ emergency rooms. Tr. p. 37; Taxpayer’s Ex. No. 16.

24. In 2007, ABC's "Center for Data Analysis" published "If Iran Provokes an Energy Crisis; Modeling the Problem in a War Game," which set up a war game to be used for advanced military study and "New Analysis Shows Voter Identification Laws Do Not Reduce Turnout," which discusses voter turnout in states where voter identification laws have been passed and the impact on voter turnout. Tr. pp. 38-39; Taxpayer's Ex. Nos. 18 and 19.
25. ABC has 25 Directors. Two Directors are paid as employees/officers of ABC. Tr. pp. 62-63.
26. ABC's Form 990 for 2006 shows "Total revenue" of \$54 million, of which 81% is from "Direct public support," 7% is from "Partnership investment income," and 5% is from "Dividends and interest from securities." Tr. pp. 59-60; Taxpayer's Ex. No. 20.
27. In 2006, ABC had gross rental income of \$638,868, from "Avenue Tenant Rental." ABC has interns three semesters/year and these interns pay rent to live in the intern facility. Tr. pp. 60-61; Taxpayer's Ex. No. 20.
28. In 2006, ABC had "Program service revenue" of \$91,988 which resulted from "publication sales." Tr. pp. 61-62; Taxpayer's Ex. No. 20.
29. In 2006, ABC had an excess of revenue over expenses of \$14 million. Net assets at the end of the year were \$154 million. Taxpayer's Ex. No. 20.
30. In 2006, ABC's "**VP Domestic Policy**" received a base pay of \$143,500 and a bonus of \$60,000, "**VP External Relations**" received a base pay of \$125,000 and a bonus of \$40,000, "**President and CEO**" received a base pay of \$348,000 and a bonus of \$390,000, "**VP Government Relations**" received a base pay of \$147,150 and a bonus of \$50,000, "**VP Communication and Marketing**" received a base pay of

\$151,500 and a bonus of \$43,000, “**VP Foreign Policy**” received a base pay of \$174,500 and a bonus of \$47,000, “**Treasurer, VP Development**” received a base pay of \$139,000 and a bonus of \$60,000, “**Ronald Reagan Senior Fellow**” received a base pay of \$225,000 and a bonus of \$55,000, “**Assistant Secretary**” received a base pay of \$69,350 and a bonus of \$14,000, “**VP Finance and Operations**” received a base pay of \$113,750 and a bonus of \$35,000, “**VP Information Technology**” received a base pay of \$119,350 and a bonus of \$32,000, and “**Executive VP**” received a base pay of \$219,000 and a bonus of \$200,000. Taxpayer’s Ex. No. 20.

31. ABC does not have capital stock, stockholders and does not pay dividends. Tr. p. 64.

Conclusions of Law:

The Use Tax 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 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 or 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)).

ABC has requested an exemption identification number pursuant to these provisions, which the Department has twice denied on the basis that ABC did not demonstrate that it operates exclusively for charitable purposes. Dept. Ex. No. 1. The Department's denial of an applicant's claim for an exemption identification number is presumed to be correct, and the applicant 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 (2nd Dist. 1985). To prove its case, an applicant must present more than just testimony denying the Department's determination. Sprague v. Johnson, 195 Ill. App. 3d 798 (4th Dist. 1990). Rather, the applicant must present sufficient documentary evidence to support its claim. *Id.*

It is well established in Illinois 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). 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 (2nd Dist. 1991).

Although it was in a case concerning a property tax exemption, the Illinois courts have used guidelines set forth in Methodist Old Peoples Home v. Korzen, 39 Ill. 2d 149 (1968) in determining whether an entity qualifies as one organized and operated exclusively for charitable purposes. Wyndemere Retirement Community, *supra*. These guidelines are that the entity: (1) has no capital, capital stock or shareholders; (2) earns no profit or dividends, but rather derives its funds mainly from private and public charity, and holds them in trust for the objects and purposes expressed in the charter; (3)

dispenses charity to all who need and apply for it; (4) does not provide gain or profit in a private sense to any person connected with it; and (5) 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. Korzen, *supra*. 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 DuPage County Board of Review v. Joint Comm'n on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461 (2nd Dist. 1995). Thus, the issue before this tribunal is whether ABC qualifies as “an institution of public charity” under the terms of Korzen. I am unable to conclude, based on the evidence and testimony presented at the evidentiary hearing, that ABC qualifies as an “institution of public charity.”

ABC was founded in 1973 with seed money from XXXXXXXX. At that time, it was felt that “there was not a voice or a mechanism for conservative ideas and conservative views to be presented to the public and to members of Congress.” “And they determined that they would like to create an organization that would represent conservative viewpoints.” Mr. XXXX opined that since 1973, ABC has been successful in providing a forum “for conservative ideas.” Tr. pp. 44-45.

In determining whether an organization is charitable in its purpose and therefore exempt from taxation, it is proper to consider provisions of its charter. Rotary International v. Paschen, 14 Ill. 2d 387 (1957). ABC was incorporated on February 16, 1973 under the District of Columbia's “Non-profit Corporation Act.” Its purposes, *inter alia*, according to its Articles of Incorporation, are to 1) to conduct and sponsor studies and research on economic, social and other educational subjects; 2) to prepare and

publish treatises, articles, newsletters, pamphlets, books and other educational materials and to distribute (by sale or otherwise) such materials to the public, schools, colleges, libraries and other interested persons and institutions; and 3) to conduct and sponsor forums, lectures, debates, and similar programs, and to prepare and distribute educational programs and materials for television and radio and other news media. Tr. p. 13; Taxpayer's Ex. No. 1.

ABC's Form 990, "Return of Organization Exempt from Income Tax," for 2006, Statement 11, "Statement of Organization's Primary Exempt Purpose," states that ABC is a "a research and educational institution – a think tank- whose mission is to formulate and promote conservative public policies based on the principles of free enterprise, limited government, individual freedom, traditional American values and strong national defense." Tr. pp. 53-54, 57-58; Taxpayer's Ex. No. 20. ABC's audited "Financial Report" December 31, 2006, again states that ABC's mission is to formulate and promote conservative public policies and that it pursues its mission by "performing timely, accurate research on key policy issues, and effectively marketing these findings to its primary audiences who are members of Congress, key Congressional staff, policy makers in the Executive Branch, the nation's news media, and the academic and policy communities." ABC's vision "is to build an America where freedom, opportunity, prosperity and civil society flourish." Taxpayer's Ex. No. 21.

In closing argument, counsel for ABC stated the following:

It seems to us that an organization that provides research and educational resources to the public, without charge, without regard to who ... is asking for it, certainly without regard to their policy perspective, and that maintains a collection of this sort is both a charity in general, and in

particular is in the nature of public library,¹ ...
Tr. p. 79.

ABC's argument would appear to be that it is an institution of public charity because it provides research and educational services to the public, without charge.

There are several problems with this argument. First, in order to be exempt from taxes under the UTA and the ROTA, an institution must be organized and operated "exclusively" for charitable purposes. 35 ILCS 105/3-5(4) and 35 ILCS 120/2-5(11). An "exclusively" charitable purpose need not be interpreted literally as the entity's sole purpose; it should be interpreted to mean the primary purpose, and not a merely incidental or secondary purpose or effect. Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430 (1st Dist. 1987). In determining whether an institution is exempt from taxation, the test is whether its primary purpose is charitable. People v. Young Men's Christian Ass'n of Chicago, 365 Ill. 118 (1936). It is well settled in Illinois that incidental acts are legally insufficient to establish that the applicant is "exclusively" or primarily a charitable organization. Rogers Park Post No. 108 v. Brenza, 8 Ill. 2d 286 (1956).

Based on the testimony and evidence admitted at the hearing, I must conclude that ABC's primary purpose is not to provide research and educational services to "the public." ABC listed its "primary exempt purpose" in its Form 990 for 2006 as "to

¹ My research indicates no Illinois reported case where a public library was found to be exempt from sales tax as a charitable institution under the ROTA (35 ILCS 120/2 *et seq.*) or UTA (35 ILCS 105/3 *et seq.*). "All free public libraries" are exempt from taxation according to the Illinois Property Tax Code, under "Charitable Purposes," 35 ILCS 200/15-65(e). There are two reported library cases under this section: Board of Directors of Stinson Memorial Library v. Board of Review of Union County, 248 Ill. 590 (1911) and People ex rel. David Gore, Auditor v. Peoria Library Association, 157 Ill. 369 (1895). Neither of these cases addresses issues that are relevant to this proceeding. The Illinois Property Tax Code, "Library Systems and Public Library Districts," 35 ILCS 200/15-66, exempts all property used exclusively for public purposes belonging to a library system established under the Illinois Library System Act or belonging to a public library district established under the Public Library District Act of 1991. There are no reported cases under this section.

formulate and promote conservative public policies.” When ABC listed its “primary exempt purpose” on its Form 990, it did not even mention that it provides educational and research services to the public without charge. Taxpayer’s Ex. No. 20. ABC’s audited “Financial Report” December 31, 2006, states that ABC’s “mission” is to formulate and promote conservative public policies to its “primary audiences” who are members of Congress, key Congressional staff, policy makers in the Executive Branch, the nation’s news media, and the academic and policy communities. Taxpayer’s Ex. No. 21. The “primary” audience does not even include “the public,” which ABC claims is the recipient of its research and educational resources, its “charity.” ABC’s website contains the following message: “Support our Efforts. Help support ABC’s efforts to spread conservative ideas. Donate today.” Tr. p. 44; App. Ex. No. 4. It must be noted that ABC is not asking for donations to provide research and educational services to the public without charge. ABC is asking for donations to “spread conservative ideas.”

ABC exists to formulate and promote conservative public policies, to spread conservative ideas. I conclude that this is ABC’s primary purpose, admittedly, its “mission.” Incidental to promoting and marketing its conservative public policies to its primary audience, ABC may provide research and educational resources to the public, without charge. But ABC does not exist for the purpose of providing research and educational resources to the public without charge. Providing these resources is clearly incidental to promoting conservative policies to the primary audience. Proceeding on the basis that promoting a conservative agenda is ABC’s primary purpose, I find no support in Illinois case law that this purpose would qualify ABC as a charity for ROT and UT exemption purposes.

Secondly, I am unable to conclude that ABC provides research and educational resources to the public without charge. Mr. XXXX testified that “[T]here are some publications that are sold.” “In particular, the ABC Guide to the Constitution, it’s sold to cover some costs of printing the book.” “But in terms of our donors and other university professors, and scholars, and the like, that book is distributed to them with no cost.” Tr. p. 62. Counsel for ABC argued that providing resources to the public, without charge, made ABC a charitable institution. There was no testimony that the “public” could download the ABC Guide or get a copy of the book, without charge. Additionally, ABC’s Articles of Incorporation allow ABC to sell its publications. The Articles state that one of its purposes is to “prepare and publish treatises, articles, newsletters, pamphlets, books and other educational materials and to distribute (by sale or otherwise) such materials to the public, schools, colleges, libraries and other interested persons and institutions.” Taxpayer’s Ex. No. 1.

ABC’s Form 990 shows “Publication Sales” of \$91,988 for year 2006. According to the Form 990, this amount is for “research publications [that] disseminate ABC research and ideas as ... in support of [its] exempt purpose.” As stated previously, ABC’s “primary exempt purpose,” according to its Form 990, is to “formulate and promote conservative public policies.” Taxpayer’s Ex. No. 20. Assuming, *arguendo*, that ABC is furnishing research and educational resources to the public without charge, it is not doing this for a beneficent purpose. I conclude from the Form 990 that the purpose of the research publications that ABC provides to the public is to further promote ABC’s conservative agenda. Incidental to promoting its conservative agenda, ABC may provide “research and educational resources to the public, without charge.” ABC’s Articles of

Incorporation, which allow it to distribute materials “by sale or otherwise,” and the “Publication Sales” of \$91,988, which serve the purpose of further promoting ABC’s agenda, do not allow me to conclude that ABC provides its publications to the public without charge.

In Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430 (1st Dist. 1987) and in Institute of Gas Technology v. Department of Revenue, 289 Ill. App. 3d 779 (1st Dist. 1997) the courts addressed the issue of whether entities that engaged in research qualified for tax exemptions as charities under Illinois law.² In each case, the exemption was denied. The applicant in Gas Research was a not-for-profit company that got its funding from a federally authorized surcharge on interstate pipeline transfers. Its stated purpose was “funding, encouraging, and conducting research and development of natural gas resources and uses.” *Id.* at 432. Using the Korzen factors as guidelines within the context of the general proposition that “[T]he charitable purpose of the qualifying entity is represented by actions, consistent with existing law, undertaken for the benefit of an indefinite number of persons, for the general welfare or which in some way reduce the burdens of government” (*id.* at 435), the court determined that the Department’s finding, that any public benefit from that entity’s research on the development of natural gas resources and uses was incidental to the primary purpose of enhancing the position of natural gas in the energy marketplace, was not against the manifest weight of the evidence. *Id.* at 436.

² In Gas Research Institute v. Department of Revenue, the entity sought a sales tax exemption number, and in Institute of Gas Technology v. Department of Revenue, a property tax exemption was at issue. The legal analysis in each case was based on the same criteria.

The court's reasoning in Gas Research is directly applicable to ABC. The primary benefit of the work done by Gas Research went to a specific industry, with the public being a secondary beneficiary. Similarly, ABC's primary purpose, its "mission," is to formulate and promote conservative public policies. It accomplishes this mission by performing and publishing research on key policy issues. The primary beneficiaries of the work done by ABC are those donors and sponsors that believe in the agenda that ABC advocates and the reforms that it spearheads, as well as ABC's "primary audience," which is in a position to influence policies and legislation that reflect ABC's agenda.

But the promotion of this conservative agenda does not benefit an indefinite number of persons or reduce a burden on government, which are characteristics of a charitable organization. The undeniable fact is that the conservative agenda is not universally accepted. There will be no discernible or positive effect on the welfare of the "indefinite number of persons" that do not adhere to ABC's conservative viewpoints. In addition, my research does not indicate and counsel for ABC did not delineate any government burden to promote the conservative agenda, although the agenda may be promoted during certain congressional and presidential administrations. Incidental to the promotion of its conservative agenda, the public may be able to access ABC's research and educational resources if they are interested or care about this agenda. The public is, at best, a secondary beneficiary of ABC's primary purpose. Certainly the record in this matter does not clearly and convincingly disprove these notions.

In the Institute of Gas Technology case, the court again looked at a not-for-profit company that conducted research and education in the energy and environmental fields. The court also looked at the Korzen factors as guidelines and extended its analysis using

similar cases decided in Minnesota (North Star Research Institute v. County of Hennepin, 306 Minn. 1), and in Utah (Eyring Research Institute v. Tax Comm'n, 598 P. 2d 1348) as persuasive but not binding. Institute of Gas Technology at 787. Following its examination of the facts in the other cases, the court stated that “[T]he most prominent factors to be gleaned from the cases relative to evaluating research institutes in the context of charitable exemptions are: (1) is the institute’s research available to the public; and (2) who directly benefits from the institute’s research efforts, taking into consideration the ability of the research to reduce governmental burdens and the remoteness of the nature of the research from traditional notions of charities.” *Id.* at 787-8.

In considering these same factors for ABC, I was unable to conclude that ABC provides its research and educational resources to the public without charge, as discussed previously. In addition, the provision of ABC’s research and educational resources to the public does not reduce a government burden. There is no government burden to promote a conservative agenda and there is no government burden to provide research and educational services about the conservative agenda to the public.

In Institute of Gas Technology, the court found that the general public was not directly benefited by the Institute’s research. The court stated that “[I]t is reasonable to conclude that, if [the Institute’s] sponsors did not expect a direct benefit from the research and development, they would not be willing to furnish funds to [the Institute]” *Id.* at 788. Similarly, it is “reasonable to conclude” that if ABC’s donors and sponsors did not expect a direct benefit from ABC’s activities in promoting a conservative agenda, they would not be willing to furnish funds to ABC. ABC’s donors and sponsors, not the

public, reap the direct benefits of ABC's research and the promotion of its conservative agenda. In fact, the "public" that does not adhere to the conservative agenda could make a cogent argument that they are harmed by the agenda, rather than reap any benefits from it.

In Institute of Gas Research, the court looked at the "remoteness" of the nature of the research from the traditional notions of charity, and noted that the further away from the traditional notions of charity the activity is, the more exactingly the courts must view the activity. *Id* at 789. A "traditional" notion of charity was offered by the Illinois Supreme Court in Crerar v. Williams, 145 Ill. 625 (1893) which defined charity, in a legal sense, "as a gift to be applied, consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their hearts under the influence of education, religion, by relieving their bodies from disease, suffering, or constraint, by assisting them to establish themselves for life, or by erecting or maintaining public buildings or works, or otherwise lessening the burdens of government." Because the acknowledged primary purpose of ABC is to promote conservative policies, it cannot be concluded that the applicant operates as a charity, in the legal sense, as articulated in Crerar v. Williams.

Article II of ABC's Bylaws states that ABC "shall not hold to any institutional point of view on public issues or legislation under consideration" and further that no activities of ABC shall "propagandize or otherwise attempt to influence legislation" and that ABC "shall operate as a non-partisan, not-for-profit organization." Taxpayer's Ex. No. 3. But these statements are at odds with ABC's "statement of primary exempt purpose" as contained in its Form 990 which states that its "mission" is to "formulate and

promote conservative public policies.” ABC’s Form 990 also states that ABC “conducted hundreds of briefings for administration officials, lawmakers and their staff on issues ranging from federal spending and unfunded liabilities to homeland security and tax policy.” App. Ex. No. 20. There was testimony at the hearing that ABC maintains a mailing list of Republican, Democratic and independent Congressmen, senators, members of the Administration and members of various departmental agencies of the government. ABC sends research papers to the people on this list. Some Congressional offices have asked to be removed from the list. Tr. pp. 48-50, 56.

In light of ABC’s expressed “mission” of formulating and promoting conservative public policies, it must be presumed that its “hundreds of briefings” and its research papers are neither ideologically neutral nor bi-partisan. ABC’s mailing list and briefings are directed at its “primary audience.” It was not satisfactorily explained at the hearing, if in fact, there is a satisfactory explanation, as to how the sending of research papers and the conducting of “hundreds of briefings” for this audience was not meant to influence legislation. It was not satisfactorily explained at the hearing, if in fact, there is a satisfactory explanation, as to how ABC’s not holding an “institutional point of view,” not “propagandizing” and operating as a “non-partisan” organization equates with its mission of formulating and promoting conservative public policies. It could easily be argued that ABC, by promoting a conservative agenda, is holding an institutional point of view, is propagandizing and is partisan.

ABC has failed to clearly and convincingly prove that it is organized and operated “exclusively” for charitable purposes. Promoting a conservative agenda, or any partisan agenda for that matter, goes well beyond traditional notions of charity in Illinois and well

beyond even the most expansive understanding of what charity is, in a legal sense, for tax exemption purposes in Illinois. In fact, one might conclude that what ABC primarily does is engage in partisanship, not charity. Unfortunately, this record does not clearly and convincingly provide for a different conclusion.

In addition, the record in this case supports a conclusion that ABC is a member organization and that the dues paid by its members give those members paying such monies privileges greater than that of any member of the public who might utilize ABC's research and educational resources. The "Fourth" section of ABC's Articles of Incorporation states that "[T]he corporation is not to have members." Tr. p. 13; Taxpayer's Ex. No. 1. In spite of this provision in ABC's Articles, ABC caused to be admitted into evidence a document entitled "Membership Levels." Taxpayer's Ex. No. 2.

According to Mr. XXXXX, this document "distinguish[es] various levels of donor contribution." Donors are referred to as members. Mr. XXXXX testified that there are "particular events that [ABC] may hold, or publications that we may distribute that would go out automatically to these different levels of people as a courtesy." "There are meetings at certain membership levels [that members] are invited to, such as our annual meeting that we hold once per year around the country. And if you are a donor at a given level, you are automatically invited to attend that meeting." "The last meeting was held here in Chicago. Former Secretary was given an honorary award, and made a presentation to the audience at that meeting." Tr. pp. 14-15.

ABC has the following twelve "Membership Levels." Basic Member (\$25); "You receive our quarterly newsletter, briefings on critical issues and the chance to participate in important opinion surveys." Supporting Member (\$50); "You receive our quarterly

newsletter, briefings on critical issues and the chance to participate in important opinion surveys.” Congress and Culture Watchers Club Member (\$100); “In addition to basic membership benefits, you receive special mailings that keep you up-to-date on ABC’s influential dealings³ with Congress, the White House and the media as well as our work on social and cultural issues.” Young President’s Club Member (\$250); “As a conservative under 40 years of age, you will be invited to both President’s Club meetings each year in addition to the other benefits of a President’s Club membership.” President’s Club Member (\$1,000); “You may choose to receive any of the more than 200 publications produced each year. In addition, President’s Club members are invited to two President’s Club Meetings a year.” Executive Committee Member (\$2,500); “Executive Committee Members receive all President’s Club benefits, plus invitations to two committee luncheons a year.” Premiere President’s Club Member (\$5,000); “Premiere President’s Club Members receive all the benefits of Executive Committee Members listed above.” Associate (\$10,000); “Membership includes all Executive Committee privileges, plus an invitation to the annual Leadership Conference and Board Meeting.” Corporate Associate (\$10,000); “Corporate Associates recognize that their support of ABC is an investment in smaller government, lower taxes, free trade, and regulations that make sense. Over 45 corporations representing industries that range from health care to defense to manufacturing support ABC’s commitment to free enterprise. Membership benefits include the full range of ABC’s publications, special corporate updates, invitations to ABC’s annual meeting, and targeted briefings in Washington.” Executive Associate (\$25,000); “Executive Associates receive all of the benefits of

³ It was not explained at the hearing how ABC’s “influential dealings” equates with ABC’s not holding an institutional point of view, not propagandizing, and operating as a “non-partisan” organization.

Associates listed above.” Premiere Associates (\$50,000); “Premiere Associates receive all of the benefits listed above.” Founder (\$100,000); “Membership includes all Associates’ benefits, plus invitations to private receptions and special events.” Tr. pp. 13-15; Taxpayer Ex. No. 2.

I conclude that ABC exists, not for a charitable purpose, but because of its members’ mutual interests in the promotion of a conservative agenda. ABC provides distinct benefits and “privileges” to its membership, depending on their level of contribution: special mailings that keep members up-to-date on ABC’s influential dealings with Congress (\$100 minimum contribution); President’s Club meetings (\$250 minimum contribution); receive any of 200 publications (\$1,000 minimum contribution); invitation to the annual Leadership Conference and Board Meeting (\$10,000 minimum contribution); invitations to private receptions and special events (\$10,000 minimum contribution by a corporation). I have concluded that the benefits derived from ABC flow to its membership, with those members who pay more, receiving more benefits. Non-contributors do not receive “privileges,” special mailings, attend President’s Club meetings, or invitations to private receptions and special events.

It would defy reason to conclude that ABC’s members are invited to events and receive publications “as a courtesy,” as Mr. Schelenski contends. Tr. p. 14. ABC’s members are paying for any “courtesy” provided by ABC with the organization providing significantly more “courtesy” to those members who contribute more. The record in this case supports a conclusion that ABC is a member organization with members who contribute more enjoying more privileges than other members and with all members enjoying privileges greater than that of any of the non-contributing “public.” ABC

provides gain, in a private sense, to higher contributing members over other members and provides gain, in a private sense, to all members over the non-contributing public.

There was no testimony at the evidentiary hearing that “donor contributions” could be waived for a potential “member” who wished to join ABC but was financially unable to “contribute.” There was no testimony or evidence that any person, corporation or institute became a “member” of ABC, at their desired membership level, without making the required minimum contribution. No documentary evidence was admitted by ABC showing that the organization had a written and advertised policy of waiving “donor contributions” for a potential “member” who was financially unable to “contribute.” The document, entitled “Membership Levels” contains no indication that a potential “member” could enjoy ABC’s benefits, at even the lowest membership level, without making the required minimum “donor contribution” of \$25. Taxpayer’s Ex. No. 2.

It is unclear how a prospective member would know that the “donor contribution” could be waived by ABC if, in fact, it can be waived. (See, for example, Highland Park Hospital v. The Department of Revenue, 155 Ill App.3d 272 (2nd Dist 1987)), where the court found that the Immediate Care Center did not qualify for a charitable exemption because, *inter alia*, advertisements for the facility did not disclose its charitable nature and there was no evidence that the general public knew that free care was available.) There was no testimony at the hearing as to whether the “donor contributions” must be made yearly. There was no testimony at the hearing as to whether ABC has specific qualifications for membership. The one qualification for membership that seems clear is that a member must make a minimum \$25 contribution.

The \$25 minimum “contribution” and the lack of a documented waiver provision for those who want to become members but are financially unable to afford it, is an obstacle in the way of those who would avail themselves of ABC’s benefits. It is recognized that charging fees and rendering benefits to persons who are not poverty stricken does not destroy the charitable nature of an organization for tax exemption purposes, but this is only true to the extent that the organization also admits persons who need and seek benefits offered but are unable to pay. Wyndemere Retirement Community v. Department of Revenue, 274 Ill. App. 3d 455 (2nd Dist. 1995). No evidence was presented by ABC showing that a person could become a “member” at any level without making the required contribution. Assuming, *arguendo*, that the promotion of a conservative agenda were a charitable endeavor, ABC’s “membership levels” and the lack of a waiver provision for those unable to pay do not allow me to conclude that ABC dispenses “charity” to all who need and apply for it, one of the distinguishing characteristics of a charitable institution.

When the primary benefit of an organization flows to its members and not the public, then an exemption will be denied. Board of Certified Safety Professionals v. Johnson, 112 Ill. 2d 542 (1986) Fraternal and social organizations do not qualify for exempt status because they operate primarily for the benefit of a limited class of persons who maintain membership therein. In Rogers Park Post No. 108 v. Brenza, 8 Ill. 2d 286 (1956), the Court found that one of the primary purposes of the organization was to foster respect for civil institutions. *Id.* at 291. It must be noted that this purpose is similar to the statement in ABC’s Form 990 that its “mission” is to formulate and promote conservative public policies based on the principles of free enterprise, limited government, individual

freedom, traditional American values and strong national defense. Taxpayer's Ex. No. 20. According to the Court in Rogers Park, the organization's purposes were "patriotic, laudable and public spirited." "Nonetheless, they do not constitute charitable purposes, however desirable or however beneficial." The Court found that the dominant use of the subject property was as a "private club rather than as a headquarters for the dispensation of charitable relief." *Id.* at 290-291. ABC can also be viewed as a "private club," composed of members who are interested in and willing to contribute to the promotion of conservative public policies, "rather than as a headquarters for the dispensation of charitable relief."

In Albion Ruritan Club v. Dep't. of Revenue, 209 Ill. App. 3d 914 (5th Dist. 1991), the court found that a community service organization's property did not warrant a tax exemption. Albion's constitution listed its objectives, *inter alia*, as "[T]o promote fellowship and good will among its members and the citizens in the community, and to inspire each other to higher efforts." In denying a tax exemption to Albion, the court noted that it must be shown that the benefits of the organization accrue to mankind directly. *Id.* at 918. The undeniable fact for ABC is that its conservative agenda is not universally accepted. It is not reasonable to conclude that ABC's benefits accrue to mankind directly. A certain level of "mankind" that does not adhere to ABC's conservative viewpoints would argue that there is no benefit from the agenda and, accordingly, that it accrues no benefit from the agenda.

Another characteristic of a charitable institution, according to Korzen, is that the institution earns no profit 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 the

charter. In 2006, ABC earned \$2.6 million from “dividends and interest from securities” and \$3.8 million from “partnership investment income.” There was no testimony at the hearing on either of these amounts and there is no explanation for the amounts in ABC’s Form 990. In 2006, ABC had gross rental income of \$638,868, from “Avenue Tenant Rental.” There was testimony that ABC has “interns coming through three semesters a year and basically paying costs to live in our intern facility.” Tr. pp. 60-61; Taxpayer’s Ex. No. 20. There was no testimony at the hearing as to whether ABC rented to the interns at a profit.⁴ 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 (2nd Dist.1991). The lack of evidence and testimony on ABC’s dividends and interest, partnership investment income and gross rental income force me to conclude that ABC has not borne its burden of proving that the institution does not earn dividends or profit.

In 2006, ABC had an excess of revenue over expenses of \$14.5 million and its accumulated excess of revenue over expenses at the end of 2006 was \$154.3 million. Taxpayer’s Ex. No. 20. It must be recognized that ABC’s accumulated excess, in absolute terms, is large, and more characteristic of a for-profit business than a “charitable” institution. It is unrealistic to conclude that a “charitable” institution would retain such a large excess “in trust” for charitable purposes expressed in its charter. There was no testimony at the hearing that ABC is retaining the \$154.3 million in excess “in trust” in order to provide more research and educational resources to the public, without charge, which ABC maintains makes it a charitable institution. It seems

⁴ It is noted that ABC has “various rental expenses” of \$1.2 million. These expenses are not identified in the Form 990 as relating to the “Avenue Tenant Rental.” Taxpayer’s Ex. No. 20.

reasonable to conclude that the excess of \$154.3 million is being held “in trust” to formulate and promote conservative public policies, which as discussed above, is ABC’s primary purpose as detailed on its Form 990. Based on the evidence and testimony at the hearing, I am not able to conclude that ABC holds its excess of revenue over expenses in trust for a charitable purpose.

ABC’s Form 990 for 2006 shows “Total revenue” of \$54 million, of which, \$43.6 million, or 81%, is from “direct public support.” Taxpayer’s Ex. No. 20. Mr. XXXXX referred to the “direct public support” as “contributions,” and this was the extent of the testimony on this major source of ABC’s funding. Tr. pp. 59-60. There is no further explanation of the amount in the Form 990. It is unclear and there was no testimony or evidence as to whether these “contributions” are from members who are paying to participate, at a certain “membership level,” in ABC’s promotion of a conservative agenda. Where most of an organization’s support is derived from membership dues and participation fees, its funds are not derived from public and private charity. The record in this case contains insufficient testimony and evidence to explain and account for 81% of ABC’s funding. Based on this record, I am unable to conclude that ABC derives its funding from public and private charity.

Another characteristic of a charitable organization discussed in Korzen is that the organization must not provide gain or profit in a private sense to any person connected with it. Korzen, *supra* at 137. No person connected to a charitable organization is permitted gain or profit in connection with the organization. School of Domestic Arts & Sciences v. Carr, 322 Ill. 562, (1926).

ABC's Form 990 for 2006 shows that its "VP Domestic Policy" received a base pay of \$143,500 and a bonus of \$60,000. "VP External Relations" received a base pay of \$125,000 and a bonus of \$40,000. "President and CEO" received a base pay of \$348,000 and a bonus of \$390,000. "VP Government Relations" received a base pay of \$147,150 and a bonus of \$50,000. "VP Communication and Marketing" received a base pay of \$151,500 and a bonus of \$43,000. "VP Foreign Policy" received a base pay of \$174,500 and a bonus of \$47,000. "Treasurer, VP Development" received a base pay of \$139,000 and a bonus of \$60,000. "Ronald Reagan Senior Fellow" received a base pay of \$225,000 and a bonus of \$55,000. "Assistant Secretary" received a base pay of \$69,350 and a bonus of \$14,000. "VP Finance and Operations" received a base pay of \$113,750 and a bonus of \$35,000. "VP Information Technology" received a base pay of \$119,350 and a bonus of \$32,000. ABC's "Executive VP" received a base pay of \$219,000 and a bonus of \$200,000. Taxpayer's Ex. No. 20.

"The employees of a charitable institution are not compelled to perform free services in order that the institution may be charitable." Yates v. Board of Review, 312 Ill. 367 (1924) "The payment of reasonable salaries to necessary employees for services actually rendered does not convert a nonprofit enterprise into a business enterprise." 86 Ill. Admin Code §130.2005(h). There was no testimony or evidence at the hearing as to whether the compensation and bonuses paid to the above officers were reasonable in 2006 or how they compared to those paid by similar organizations in the community.⁵

⁵ ABC caused to be admitted into evidence an Internal Revenue Service examination of its Form 990 for tax year 2002, which asked for additional information on the compensation paid to three of its officers. In 2002, officer EF received compensation and bonus of \$542,500, including a "commitment bonus" of \$100,000, officer PT received compensation and bonus of \$310,801, and officer EM received compensation and bonus of \$271,400. On October 26, 2005, ABC received a letter from the Internal Revenue Service stating that, as of tax year ended December 31, 2002, ABC "continues to qualify for exemption from Federal income tax." Taxpayer's Ex. No. 23. In 2006, these same officers received

There was no testimony or evidence offered as to the basis of the bonuses given to the above officers in 2006. There was no testimony or evidence as to whether the bonuses are based on membership, contributions, the successful passage of conservative legislation, or the excess of revenue over expenses. Without this evidence, I am unable to conclude that these salaries and bonuses, which, in absolute terms, are more indicative of a for-profit business than a charity, were reasonable. Without evidence as to the basis of the bonuses, I am unable to conclude that ABC is not providing gain in a private sense to these officers.

There was testimony at the evidentiary hearing that that ABC does not have capital stock, stockholders and does not pay dividends. Tr. p. 64. This is the only characteristic of a charitable organization that I can conclude is possessed by ABC.

Tax exemptions are inherently injurious to public funds because they impose lost revenue costs on taxing bodies and the overall tax base. In order to minimize the harmful effects of such lost revenue costs, and thereby preserve the Constitutional and statutory limitations that protect the tax base, statutes conferring property tax exemptions are to be strictly construed in favor of taxation. People ex rel. Nordland v. Home for the Aged, 40 Ill. 2d 91 (1968). Great caution must be exercised in determining whether property is exempt in order to insure that “sound principles” are preserved, unwarranted exemptions from taxation are avoided and that only the limited class of properties meant to be exempt actually receives the exempt status that the Legislature intended to confer. Otherwise, any increases in lost revenue costs attributable to unwarranted application of the charitable

compensation and bonuses of \$738,000, \$419,000 and \$280,000, respectively. Taxpayer’s Ex. No. 20. The Internal Revenue Service’s 2002 examination and ABC’s supporting documentation for the examination are wholly inadequate for me to conclude that its compensation and bonuses were reasonable in 2006.

exemption will cause damage to public treasuries and the overall tax base. In this case, ABC has failed to prove by clear and convincing evidence that it is an exclusively charitable organization, as required for exemption under Illinois statutes, and that it falls within the limited class of institutions meant to be exempt for charitable purposes.

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

ENTER:

May 9, 2008

Kenneth J. Galvin