

**ST 08-5**

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

v.

**ABC SERVICE FOUNDATION,  
Taxpayer.**

) Docket No. 07-ST-0000  
)  
) Sales Tax Exemption  
)  
)  
) Julie-April Montgomery  
) Administrative Law Judge

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**RECOMMENDATION FOR DISPOSITION**

**Appearances:** Charles J. Bellock, of Bellock & Coogan, for ABC Service Foundation; Paula M. Hunter, Special Assistant Attorney General, for the Illinois Department of Revenue.

**Synopsis:**

The Illinois Department of Revenue (“Department”) twice denied ABC Service Foundation’s (“Applicant”) request 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. Applicant protested the second denial and requested a hearing in the matter. At issue was whether Applicant 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)). The Department contends that the primary purpose of Applicant’s organization is not charitable. Applicant submitted no documents into evidence but did present the testimony of John Doe, one of its Director’s, and Jim Doe, its chief operating officer.

Following the submission of all evidence and a review of the record, it is recommended that the denial be affirmed, and in support thereof are made the following findings of fact and conclusions of law:

**Findings of Fact:**

1. The Department's case, inclusive of all jurisdictional elements, is established by the admission into evidence of the Department's June 8, 2007 letter initialing denying Applicant an exemption and the Department's second denial of exemption dated July 17, 2007. Department Ex. No. 1; Tr. p. 7.
2. Applicant is an Internal Revenue Service ("IRS") section 501(c)(4) entity. Tr. pp. 15, 36, 44.
3. A minimum of 95% of Applicant's income for the fiscal years ending July 31, 2006 and 2007 was derived from contracts with third parties who solicit, secure and sell donated items on Applicant's behalf. Tr. pp. 27-32, 61, 62, 81, 82.
4. Approximately less than 1% of Applicant's income for the fiscal years ending July 31, 2006 and 2007 came from direct public support/ giving. Tr. 81, 82.

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

At hearing, the Department introduced copies of its denials of Applicant's application under the certificate of the Director. Department Ex. No. 1; Tr. p. 7. This exhibit, without more, constitutes *prima facie* proof that Applicant is not entitled to the exemption. See Quincy Trading Post v. Department of Revenue, 12 Ill. App. 3d 725, 729-30 (4<sup>th</sup> Dist. 1973). The Department's *prima facie* case is overcome, and the burden shifts to the Department to prove its case, only after a taxpayer and/or applicant (as in the instant case) presents evidence that is consistent, probable and closely identified with its books and records, to show that the Department's determinations were not correct. Copilevitz v. Department of Revenue, 41 Ill. 2d 154, 157-58 (1968). In addition, "when a taxpayer claims that he is exempt from a particular tax ... the burden of proof is on the taxpayer." Balla v. Department of Revenue, 96 Ill. App. 3d 293, 296 (1<sup>st</sup> Dist. 1981) (*citing* Telco Leasing, Inc. v. Allphin, 63 Ill. 2d 305 (1976); Bodine Electric Co. v. Allphin, 81 Ill. 2d 502 (1980)). To prove its case, a taxpayer or applicant must present more than just testimony that denies the Department's determination. Sprague v. Johnson, 195 Ill. App. 3d 798, 804 (4<sup>th</sup> Dist. 1990). Rather, the taxpayer or 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 therefore, "exemptions are to be strictly construed" with any doubts concerning the applicability of an exemption "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 (2<sup>nd</sup> Dist. 1991).

Although it was a case that involved a property tax exemption, Illinois courts have used the guidelines set forth in Methodist Old Peoples Home v. Korzen, 39 Ill. 2d 149 (1968) to determine whether an entity qualifies as one organized and operated exclusively for charitable purposes under Illinois' retailers' occupation and use tax acts. Wyndemere Retirement Community v. Department of Revenue, 274 Ill. App. 3d 455, 459-60 (2<sup>nd</sup> Dist. 1985). These guidelines are that the entity: 1) benefit an indefinite number of people for their general welfare or in some way reduces the burdens of government; 2) has no capital, capital stock, or shareholders, and does not profit from the enterprise; 3) 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 organization's charter; 4) does not provide gain or profit in a private sense to any person connected with it; 5) dispenses charity to all who need and apply for it; 6) places no obstacles in the way of those seeking the benefits; and 7) its primary purpose is charitable. Korzen, *supra* at 156-157.

An "exclusively" charitable purpose need not be interpreted as the entity's sole purpose but rather is interpreted to mean the primary purpose, and not a purpose that is incidental or secondary. Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430 (1<sup>st</sup> Dist. 1987).

While Applicant did not introduce any documents into evidence it did provide testimony with regard to documents that were identified but not proffered for admission into evidence. Applicant's chief operating officer, Jim Doe, testified that Applicant had amended its articles of incorporation after submission of its exemption application to provide that upon its dissolution its assets would be distributed to IRS section 501(c)(3)

entities. Tr. pp. 36-40. This officer also testified that the federal form 990's filed for Applicant's fiscal years that ended on July 31, 2006 and 2007 reflected expenses in excess of revenue. Tr. pp. 46-48. Mr. Jim Doe testified that Applicant's original articles of incorporation that were submitted to the Department for review of its exemption application (tr. pp. 62, 63) states Applicant's purpose to be to "[h]andle service and rehabilitation work and funds of Amvets in the State of Illinois." Tr. p. 64. Jim Doe further testified that Applicant's purpose pursuant to its Constitution and Bylaws is "to be of assistance in furthering the programs and services of the American/Amvets State Service Department." Tr. pp. 68, 73.

Applicant offered no books and records regarding its organization and operations into evidence. Without such records, an applicant is unable to satisfy any of the Korzen guidelines. See Wyndemere Retirement Community v. Department of Revenue, 274 Ill. App. 3d 455, 460 (2d Dist. 1995) (court must construe all facts and resolve all debatable questions in favor of taxation); Balla v. Department of Revenue, 96 Ill. App. 3d 293, 296-97 (1<sup>st</sup> Dist. 1981) (uncontroverted testimony that was not corroborated with documentary evidence was insufficient to show that taxpayer was entitled to claimed exemption).

Applicant presented no evidence, documentary or testimonial, as to the second, fourth, fifth and sixth Korzen guidelines. It must therefore be found that Applicant has failed to meet these four guidelines.

Applicant failed to offer documents into evidence or even testimony as to whether it earned profits or dividends. While there was testimony as to the sources of Applicant's funding no documents on funding were proffered for admission into evidence. Moreover,

Applicant readily admitted that its funds were not “mainly from private and public charity” but rather as revenue from contracts with third parties. Thus, it is clear that the third Korzen guideline cannot be deemed met.

Applicant’s chief operating officer testified that Applicant’s activities consisted of supplying 511 tactical gear and phone cards to troops in Iraq and Afghanistan, annual student scholarships, annual funding to the USO, funding a pilot project that will help homeless veterans, and provision of service officers to assist veterans with paperwork for filing of claims, be they benefits or compensation. Tr. pp. 18-23, 50-53. But no documents were identified or proffered to substantiate this testimony. Hence, the first Korzen guideline has not been satisfied.

As to the seventh Korzen guideline that queries whether Applicant’s primary purpose is charitable, Applicant again failed to proffer documents that supported its allegations to have a primary purpose that was charitable. Thus, satisfaction of the seventh and major Korzen guideline is not achieved.

Applicant failed to offer documents either in support of the guidelines espoused in Korzen, supra, or to rebut the Department’s *prima facie* case. This lack of documentary evidence, combined with Applicant’s admission that it is an entity with less than 1% of its income derived from charitable giving makes clear that Applicant is not entitled to the charitable exemption. It is Applicant’s burden to introduce evidence sufficient to show that it was organized and actually operated as an exclusively charitable organization. Chicago Patrolmen’s Assoc. v. Department of Revenue, 171 Ill. 2d 263, 271 (1996) (“The burden of proving the right to exemption rests upon the party seeking it.”).

Inasmuch as Applicant failed to introduce any documents into evidence, it has not satisfied its legal burden to show itself entitled to exemption as a charitable organization.

**Conclusion:**

In light of the above, it is recommended that the Department's denial of ABC Service Foundation's application for an exemption identification number be finalized.

June 13, 2008  
Date

Julie-April Montgomery  
Administrative Law Judge