

ST 09-13

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 # 08-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; Rodney G. Clark of Capps, Ancelet, Clark & Rasmussen for ABC, Inc.

Synopsis:

ABC, Inc. (“taxpayer”) sent a renewal application to the Department of Revenue (“Department”) to renew its exemption identification number in order to continue to purchase tangible personal property at retail free from the imposition of retailers’ occupation and use taxes. The Department denied the renewal application, and the taxpayer timely protested the denial. An evidentiary hearing was held during which the issue presented was whether the taxpayer is organized and operated exclusively for charitable or educational 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 operates a playground that is used for free by children of all ages. After reviewing the evidence presented, it is recommended that this matter be resolved in favor of the taxpayer.

FINDINGS OF FACT:

1. The taxpayer is an Illinois non-profit corporation that was incorporated on June 14, 1993. (Dept. Ex. #1, p. 14)
2. On July 1, 1994, the Department determined that the taxpayer was exempt from retailers' occupation and use taxes.¹ The Department made the same determination on March 19, 1999 and again on November 21, 2003.² (Dept. Ex. #1, pp. 9-11)
3. The taxpayer sent an application for renewal of its exemption, which was denied by the Department on October 17, 2008. On October 27, 2008, the taxpayer sent a letter to the Department asking it to reconsider its denial of the taxpayer's renewal application. On October 31, 2008, the Department issued a second denial of the taxpayer's renewal application. (Dept. Ex. #1, pp. 2, 6)
4. The taxpayer has no capital, capital stock, or shareholders and is exempt from federal income taxes under section 501(c)(3) of the Internal Revenue Code pursuant to a determination made by the IRS. (Dept. Ex. #1, pp. 13-15)
5. The taxpayer's articles of incorporation indicate that it was organized for civic and educational purposes. (Dept. Ex. #1, p. 15)

¹ The letter granting the exemption indicated that the exemption would expire on July 1, 1999 unless an application for renewal was filed at least 3 months prior to the expiration date. (Dept. Ex. #1, p. 9)

² The letter dated November 21, 2003 indicated that the exemption would expire on December 1, 2008 unless an application for renewal was filed at least 3 months prior to the expiration date. (Dept. Ex. #1, p. 11)

6. The taxpayer held fundraising events for approximately two years to cover the cost of materials and professional fees to build a playground in Somewhere, Illinois. The taxpayer hired John Doe & Associates of New York, as architects to design the playground. Mr. Doe is known for designing playgrounds with the assistance of children in the community, and volunteers from the community build the playground. (Taxpayer Ex. #4, pp. 1-6; Ex. #5)
7. In June 1994, a 10,000 square foot wooden playground, which is known as the ABC Park, was built using volunteer labor. It was built during 5 days of construction where more than 1,100 people registered to help build it. (Dept. Ex. #1, p. 33; Taxpayer Ex. #4, p. 6)
8. The outdoor playground is used by children of all ages. The playground is open to everyone year round, and there is no charge for using it. There is no fence around the playground. (Dept. Ex. #1, pp. 3, 33; Tr. pp. 10, 17)
9. The property on which the playground is located is owned by the school district. (Taxpayer Ex. #4, p. 2; Tr. pp. 10, 15, 20)
10. The taxpayer's unaudited statement of income and expenses for the fiscal year ending May 31, 2008 shows the following:

<u>Revenue:</u>	
Income/Donations	\$239.40
	<u>199.70</u>
Total Revenue	439.10
 <u>Expenses:</u>	
Electricity	346.20
Lawn mowing	520.00
Plumbing repair	347.99
Garbage	273.00
Insurance	612.00
Water sealer	302.11

Water	<u>86.00</u>
Total Expenses ³	\$2,487.30

(Dept. Ex. #1, p. 32; Tr. p. 32)

11. The taxpayer uses sealer to keep the wood from deteriorating. The taxpayer sometimes purchases wood chips to cover the ground. (Tr. pp. 19-20)

12. An annual cleanup day is held in May. Local utility companies send employees to volunteer on that day. (Tr. p. 30)

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).

In order to determine whether the taxpayer is organized and operated exclusively for charitable purposes, the following guidelines are considered: (1) whether the organization’s gift benefits 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

³ The testimony indicated that the taxpayer pays \$100 a year in rent to the school district, but sometimes the taxpayer will “forget” to pay the rent. (Tr. pp. 23, 32)

shareholders and earns no profits or dividends; (3) whether the organization's funds are derived mainly from public and private charity and are held in trust for the objects and purposes expressed in its charter; (4) whether charity is dispensed to all who need and apply for it and without obstacles of any character in the way of those who need and would avail themselves of the charitable benefits dispensed; (5) whether the organization does not provide gain or profit in a private sense to any person connected with it; and (6) whether the primary purpose for which the property is used and 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. Du Page County Board of Review v. Joint Commission on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461, 466 (2nd Dist. 1995). 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. *Id.*

The taxpayer has the burden of proving by clear and convincing evidence that it is entitled to the exemption. Wyndemere, supra; Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430, 436 (1st Dist. 1987). 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); Balla v. Department of Revenue, 96 Ill. App. 3d 293, 296 (1st Dist. 1981). The taxpayer must present sufficient documentary evidence to support its claim. *Id.*

The Department argues that the taxpayer does not meet the guidelines in Methodist Old Peoples Home, *supra*, but the Department did not expound on this. The Department also contends, again without specifics, that the primary purpose of the taxpayer is not charitable and that even though the taxpayer's work is commendable and has public value, the organization does not operate exclusively for charitable purposes. The Department, therefore, believes that the taxpayer does not qualify for an exemption identification number.

The taxpayer argues that it meets the factors in Methodist Old Peoples Home, *supra*. The taxpayer contends that it benefits an indefinite number of people because anyone can use the park and no limits are placed on its use. The taxpayer claims that it receives all of its income from fundraisers or donations, and no tax dollars are used to fund the park. The taxpayer believes a park such as this one that serves children and families for free should be exempt from taxes.

In Decatur Sports Foundation v. Department of Revenue, 177 Ill. App. 3d 696 (4th Dist. 1988), the court held that a 40-acre sports complex was entitled to a charitable exemption from property taxes.⁴ The complex was used most extensively for baseball games, but it was also used, among other things, for soccer games and bicycle competitions. The court noted that other courts had broadly interpreted the concept of charity and concluded that the operation of the complex reduced a governmental burden.

⁴ Although the Decatur Sports 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*.

The court also found that all the factors of Methodist Old Peoples Home, *supra*, had been met.

In the present case, the taxpayer has similarly met all of the factors in Methodist Old Peoples Home, *supra*. The taxpayer benefits an indefinite number of people because the facility is free and open to anyone who wants to use it. The taxpayer has no capital, capital stock, or shareholders, and it earns no profits or dividends. The majority of its income is from donations, charity is provided to all who need it, and no obstacles are placed in the way of those seeking its charitable benefits. The primary use of the playground is for charitable purposes, and the taxpayer is entitled to an exemption identification number.

Recommendation:

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

Linda Olivero
Administrative Law Judge

Enter: November 30, 2009