

ST 12-09

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,	}	Docket No: XXXXX
v.		Sales Tax Exemption
THE ABC CENTER,	}	Kenneth J. Galvin
APPLICANT		Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Mr. John Doe, *pro se*, on behalf of THE ABC CENTER; Mr. John Alshuler, Special Assistant Attorney General, on behalf of the Department of Revenue of the State of Illinois.

SYNOPSIS: On May 26, 2011, the Illinois Department of Revenue (hereinafter the “Department”) denied THE ABC CENTER’s (hereinafter “The Center”) second request that the Department issue it an exemption identification number so that it could purchase tangible personal property at retail free from the imposition of use tax, as set forth in 35 ILCS 105/1 *et seq.* On June 9, 2011, The Center protested the Department’s decision and requested a hearing, which was held on March 6, 2012, with Mr. John Doe, Controller, and Ms. Jane Doe, Instructor, testifying. The sole issue to be determined at the hearing was whether The Center qualified for an exemption identification number as “a corporation, society, association, foundation or institution organized and operated

exclusively for educational ... purposes.” 35 ILCS 105/3-5(4). Following a careful review of the evidence and testimony presented at the hearing, I recommend that the Department’s denial be affirmed.

FINDINGS OF FACT:

1. The Department’s *prima facie* case, inclusive of all jurisdictional elements, is established by the admission into evidence of the Department’s second denial of exemption dated May 26, 2011. Tr. pp. 6-7; Dept. Ex. No. 1.
2. The Center was established as a result of a vision given to Dr. Jack Black “to provide practical business and leadership teaching utilizing biblical principles and resources.” The mission of The Center “is to provide practical teaching, resources and a state of the art environment that produces successful Christian entrepreneurs who will create income and employment opportunities for many others.” The Center was incorporated on June 9, 1997 and is exempt from income tax under Section 501(c)(3) of the Internal Revenue Code. App. Ex. No. 1.
3. As of December 31, 2009 and 2010, The Center had “Sales and Other Revenue” of \$125,784 and \$73,234 and “Rent” of \$68,275 and \$68,829, respectively. App. Ex. No. 2.

CONCLUSIONS OF LAW:

An examination of the record establishes that The Center has not demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant an exemption from use tax. Accordingly, under the reasoning given below, the determination by the Department denying The Center a sales tax exemption number should be affirmed. In support thereof, I make the following conclusions.

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 free from imposition of the 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 ... educational purposes.” 35 ILCS 105/3-5(4). Section 105/2c of the Use Tax Act states that entities organized for educational purposes include “vocational or technical schools or institutes organized and operated exclusively to provide a course of study of not less than 6 weeks duration and designed to prepare individuals to follow a trade or to pursue a manual, technical, mechanical, industrial, business or commercial occupation.” 35 ILCS 105/2c. Sections 2-5(11) and 120/2h of the Retailers’ Occupation Tax Act contain similar provisions. 35 ILCS 120/2-5(11) and 35 ILCS 120/2h.

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 that it is entitled to the exemption. Wyndemere Retirement Community v. Department of Revenue, 274 Ill. App. 3d 455 (2nd Dist 1995). To prove its case, a taxpayer must present more than testimony denying the Department’s determination. The taxpayer must present sufficient documentary evidence to support its claim. Sprague v. Johnson, 195 Ill. App. 3d 798 (4th Dist. 1990). It is well established that there is a presumption against exemption and that therefore, “exemptions are to be strictly construed” with any doubts concerning the applicability of the exemption “resolved in favor of taxation.” Van’s Material Co. Inc. v. Department of Revenue, 131

Ill. 2d 196 (1989). In the instant case, there is insufficient documentary evidence in the record for me to conclude that The Center is entitled to a sales tax exemption number.

THE ABC CENTER consists of four distinct “divisions.” THE ABC CENTER, consisting of the four divisions, applied for, and was denied, a sales tax exemption number. The four divisions of THE ABC CENTER are “The ABC School,” “THE ABC CENTER for Vocational Training and Career Education,” “THE ABC CENTER for Business Development” and “The Illinois Small Business Development Center.” App. Ex. No. 1.

The ABC School opened in 1998 “with a global vision to build world-class, state-of-the-art business schools that educate Christians on how to become successful entrepreneurs and business leaders using the Word of God.” “The mission of The ABC School is to select and train believers, who have been called to be entrepreneurs, in the practical aspects of starting and running a business using biblical principles.” The curriculum of the School focuses on all aspects of establishing and operating a business including leadership and organization, accounting and finance, business management, marketing and sales, and developing and writing a business plan. App. Ex. No. 1.

According to the testimony, the School “is serving the low-income impoverished community in the City of Chicago and Forest Park.” “It is there solely to provide folks that do not have an opportunity to go to some of the traditional schools an opportunity to go through a vocational program where they can create a business plan to start a business.” Tr. p. 8. The tuition rate is \$2,700/year for a nine-month course. According to the testimony, “the market rate for such a class is well over \$5,500.” “So therefore, just based on the simple fact that the tuition rate to go through this particular school is so low ... that this school should be provided with tax exempt status.” Tr. p. 9.

THE ABC CENTER for Vocational Training and Continuing Education, another division of THE ABC CENTER, has a stated mission “to train and equip people in specialized skill to enable them to hone their gifts to such a degree they are able to maximize their earnings potential.” The Center offers a “full curriculum of classes as well as numerous other programs that lead to specialized skill acquisition including tailoring, welding, carpentry and construction trades.” These classes represent vocations and trades designed to provide a person with the best possible opportunity to earn a meaningful wage. App. Ex. No. 1. Ms. Jane Doe testified that this program is for anybody who is not going to enroll in the nine-month program. Students are also taught computer skills, Microsoft and resume writing. Tr. p. 22.

THE ABC CENTER also includes another division, “THE ABC CENTER for Business Development,” (“ACBD”). According to an advertising pamphlet offered into evidence, ACBD “offers a multi-pronged approach in serving the needs of entrepreneurs and business leaders.” ACBD offers a full-range of entrepreneurial programs and services in one location that are designed to train, nurture, and support entrepreneurs in starting and running a successful business, including “business offices available for lease,” “technical skill training on cutting-edge software,” “ABS Mailboxes to officiate business correspondence,” and “targeted workshops/seminars and conferences.” ACBD “represents God’s divine formula for success, and has been established to provide believers with practical application of these principles.” App. Ex. No. 1. There is no testimony on ACBD in the record.

THE ABC CENTER also includes another division, “The Illinois Small Business Development Center” (“TISBDC”), which was established in 2005 and provides professional business consulting, business training workshops and assistance in obtaining

business loans to assist both established and emerging entrepreneurs in achieving business goals and profits. TISBDC provides individualized confidential business consultations at no cost in areas including SBA loan assistance, business certifications and contract opportunities, business planning for dramatic increase and sustained growth, patent and new product development and launch, business start-ups, business acquisitions and market analysis and strategies to capitalize on emerging markets. Workshops are offered in such areas as how to start a business in Illinois, business financing, government procurement, e-commerce and negotiation skills. App. Ex. No. 1. According to the testimony, TISBDC is the first faith-based business development center in the country. This is the extent of the testimony in the record on TISBDC.

The problem with THE ABC CENTER's application for a sales tax exemption number, and the reason that I cannot recommend it, is that the application includes all four divisions of THE ABC CENTER. Two divisions, The ABC Center and THE ABC CENTER for Vocational Training and Continuing Education may possibly be vocational or technical schools with programs of study of not less than six weeks duration. 35 ILCS 105/2c. The only documentary evidence offered to support the exemption for these two divisions is advertising pamphlets and a consolidated financial statement. Mr. Wesley testified that the school is not accredited. "However, it is certified as a business school in the State of Illinois." Tr. p. 10. No documentary evidence was offered to support this statement. There is nothing in the pamphlets or the financial statement to indicate that any division is certified as a business school. Whether an institution has been organized and is operating for an exempt purpose is to be determined from its charter and bylaws and actual facts relating to its method of operation. DuPage County Bd. of Review v. Joint Com'n on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461 (2nd Dist.

1995). No charters or bylaws were offered into evidence. The transcript of the testimony in this case is approximately 15 pages. “Actual facts relating to its method of operation” are not in the record.

A further reason not to recommend this exemption is that is unclear from the record what the basis is for exempting “THE ABC CENTER for Business Development,” (“ACBD”) and “The Illinois Small Business Development Center” (“TISBDC”). There is no testimony on ACBD in the record and all information on it in this Recommendation is from an advertising pamphlet offered into evidence. It must be noted further that the pamphlet states that ACBD offers “business offices available for lease.” App. Ex. No. 1. As of December 31, 2009 and 2010, The Center had “Sales and Other Revenue” of \$125,784 and \$73,234 and “Rent” of \$68,275 and \$68,829, respectively. App. Ex. No. 2. There is no explanation for these amounts in the record.

Additionally, the only testimony in the record on TISBDC is that it is the first faith-based business development center in the country. I cannot discern from the record how this division would qualify for the requested educational exemption.

The issue before this tribunal is whether THE ABC CENTER, consisting of four divisions, is organized and operated exclusively for educational purposes. “Exclusively” as used in the statute refers to the primary purpose of the organization, not any secondary or incidental purpose. Evangelical Hospital Association v. Novak, 125 Ill. App. 3d 439 (2nd Dist. 1984). An organization may have many activities but the question of whether it is entitled to a sales tax exemption must be determined from its primary activity. I am unable to determine from the extremely limited record of this case that THE ABC CENTER’s primary activity is educational. In this matter, THE ABC CENTER has the burden of clearly and conclusively proving that it is entitled to the exemption it is

seeking. Wyndemere Retirement Community v. Department of Revenue, 274 Ill. App. 3d 455 (2nd Dist 1995). The evidence of record falls far short of proving, clearly and convincingly, that THE ABC CENTER is organized and operated exclusively for educational purposes.

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 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). In addition, great caution must be exercised in determining whether an institution is organized and operated exclusively for educational purposes. Otherwise, any increases in lost revenue costs attributable to unwarranted application of the use tax exemption will cause damage to public treasuries and the overall tax base. In this case, THE ABC CENTER has failed to prove first, that it is organized and operated exclusively for educational purposes and, second, that it falls within the limited class of organizations that the Legislature meant to be exempt from use tax purchases of tangible personal property.

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

Kenneth J. Galvin

July 9, 2012