

ST 14-15

Tax Type: Sales Tax

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 ORGANIZATION, INC.
Taxpayer**

Docket # XXXX

Claim for Exemption Number

RECOMMENDATION FOR DISPOSITION

Appearances: Robin Gill, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Timothy L. Bertschy and Gregory J. Rastatter of Heyl, Royster, Voelker & Allen for ABC ORGANIZATION, Inc.

Synopsis:

ABC ORGANIZATION, Inc. (“taxpayer”) sent an application to the Department of Revenue (“Department”) for an exemption identification number in order to purchase tangible personal property at retail free from the imposition of retailers’ occupation and use taxes. The Department denied the 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 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 was organized to support people, and their descendants, who originated from the town of Happyville. The taxpayer currently, in addition to supporting people from Happyville,

offers support and the use of its facility to various people and organizations. The taxpayer claims that it is a charitable organization that operates its facilities exclusively for charitable purposes. The Department contends that the taxpayer is a membership organization that does not operate its facilities exclusively for charitable purposes. After reviewing the record, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. Sometime around 1914, a group of Happy people who live near Anywhere, Illinois started an organization in order to take care of their fellow members in the event that something happened where they would need financial assistance. At that time, the members paid one dollar in dues per month. (Dept. Ex. #1, p. 50; Taxpayer's Ex. #3, p. 2; Tr. pp. 14-15)
2. Sometime later the group was incorporated as the taxpayer, and the taxpayer provided articles of incorporation dated September 13, 2001 that indicate the taxpayer's purposes as follows:¹

To unite all persons originating from the town of Happyville, and also persons who have lived in the town and made it their home, and their descendants; to look after their common welfare and to assist in helping said people improve their condition in life, morally and materially; and to teach such principles and render such assistance as will make said people good, moral, upright, charitable and patriotic citizens. (Dept. Ex. #1, pp. 65, 68; Taxpayer Ex. #1, pp. 1, 4)

3. Some of the additional purposes indicated in the same articles of incorporation are as follows:

To provide elderly persons and handicapped persons with housing facilities and services specially designed to fit their physical, social and psychological needs, and to promote their health, security, happiness and

¹ The taxpayer's exhibits include its first bylaws, which appear to be dated 1985 (Taxpayer's Ex. #3; Tr. pp. 35-36), but the date was not clarified by the taxpayer. Although the bylaws refer to the taxpayer as a corporation, it is not clear when the taxpayer was first incorporated.

usefulness and longer living, the charges for such facilities and services to be predicated upon the provisions, maintenance and operation thereof on a nonprofit basis.

The Corporation is irrevocably dedicated to and operated exclusively for charitable and nonprofit purposes; and no part of the income or assets of the Corporation shall be distributed to nor inure to the benefit of its Members, Directors, Officers, or any individual; Directors and Officers shall serve without compensation. (Dept. Ex. #1, pp. 69-70; Taxpayer Ex. #1, pp. 5-6)

4. On November 13, 2009, amendments to the taxpayer's articles of incorporation were filed, and they indicated the taxpayer's purposes as follows:

The purposes for which the corporation is organized, are: exclusively charitable, religious, scientific, literary, cultural or educational, and not for financial gain; being to obtain, solicit, receive, acquire, accept, hold, manage, administer and invest, such assets as may be periodically distributed to, donated, granted, conveyed, transferred, contributed, devised, bequeathed or gifted to the corporation by a person or persons, or by any firm, foundation, association, estate, partnership, corporation or entity, whether private or public, or any other source, and periodically to contribute such of its assets as it may determine in order to assist corporations, associations and institutions organized and operated for the purposes so described, that qualify as exempt under Section 501(c)(3) of the Internal Revenue Service Code. All of the assets and all of the earnings of the corporation shall be utilized exclusively and pursuant to the purposes herein described, including the payment of expenses incidental thereto. (Dept. Ex. #1, pp. 72-75; Taxpayer Ex. #2)

5. The taxpayer's by-laws that appear to be dated 1985 state the taxpayer's purpose as follows:²

The primary purpose of this corporation is to unite all persons originating from the town of Happyville, their spouses, their descendants and the spouses of their descendants, in activities charitable in nature, for the purpose of benefitting worthy local charities, worthy national charities, and the people of Happyville, whenever feasible, and further unite the aforesaid persons in activities social in nature, to improve the relationships of the members among themselves, and to encourage the existence of corporation in perpetuity. (Dept. Ex. #1, p. 50; Taxpayer's Ex. #3, p. 2)

² The date on the bylaws is not clear and was not clarified in the testimony. (Tr. pp. 35-36)

6. The taxpayer's most recent by-laws are not dated, and they do not explicitly include a purpose for the corporation. The taxpayer's manager stated that the purpose remained the same as in the previous by-laws. (Dept. Ex. #1, pp. 33-48; Taxpayer Ex. #3, #4, #5; Tr. pp. 37-38)
7. On March 7, 2013, an amendment was issued for the by-laws that states as follows:

No compensation shall be paid to the directors for their services as director. A director, however, may be an employee of the corporation or may be an independent contractor with the corporation and may receive compensation pursuant to such employment or such contract with the corporation. No director may vote on any matter in which said director has a financial interest. (Taxpayer's Ex. #6)
8. No director has been compensated for acting as a director or officer. (Tr. pp. 20-21, 27-28, 41)
9. According to the most recent by-laws, the taxpayer has one class of members who are elected by an affirmative vote of two-thirds of the board of directors.³ (Dept. Ex. #1, p. 33; Taxpayer Ex. #5)
10. The taxpayer currently has approximately 800 members. The annual membership dues are \$35 for men and \$10 for women.⁴ (Tr. pp. 15-16, 126-127)
11. During 2010, a separate company was "spun off" from the taxpayer. On August 19, 2010, the ABC ORGANIZATION Banquet, Inc. ("Banquet") was incorporated. The Banquet is a for-profit corporation with shareholders.⁵ (Dept. Ex. #1, pp. 78-84)
12. The Banquet was incorporated in order to allow the taxpayer to be exempt from federal income taxes as a public charity under section 501(c)(3) of the Internal Revenue Code.

³ According to the first by-laws, the qualifications for membership required the candidates to either be born in Happyville or descended from a Happyvillean. Any child with a parent of Happyville parentage or spouse of an Happyvillean or descendant was also eligible for membership. (Dept. Ex. #1, p. 51; Taxpayer's Ex. #3, p. 3)

⁴ There are no dues for members who are over 63 years old. (Tr. p. 126)

⁵ The Banquet is not seeking an exemption identification number. (Tr. pp. 8, 96-97)

The IRS previously did not allow the exemption because the taxpayer was earning money from the rental of its hall. (Tr. pp. 114-118)

13. On September 1, 2010, a few weeks after the Banquet was incorporated, the taxpayer became exempt from federal income taxes under section 501(c)(3) of the Internal Revenue Code. Prior to that date, the taxpayer was exempt under section 501(c)(4) of the Code, and contributions made to the taxpayer prior to September 1, 2010 were not deductible by the donor. (Dept. Ex. #1, pp. 62-64; Taxpayer Ex. #9, pp. 1-3)
14. The taxpayer owns approximately 18 acres of property located in Anywhere, Illinois. A banquet hall and pavilion are on the property, as well as a residence near the hall where a caretaker lives. Further down on the property are 100 apartments for elderly residents.⁶ The taxpayer acquired the property sometime during the 1970's. (Dept. Ex. #1, pp. 106-107; Tr. pp. 18-19, 24, 122-125)
15. The taxpayer's hall has a kitchen and bar facility. The hall can accommodate 500 people. In addition to the real property, the taxpayer owns all of the personal property in the hall including kitchen equipment, utensils, and tables and chairs for the hall. The Banquet does not own any real or personal property. (Tr. pp. 18-20, 22, 24, 135-136)
16. The taxpayer uses the hall for its two annual dinners and its Friday fish fries, which are all open to the public. The two annual dinners are the Happyville Supper and the Happyville Shish Kabob. The Happyville Supper is always on the first Sunday in November, and the taxpayer charges \$15 for adults and \$7 for children. The Happyville Shish Kabob is on the last Sunday in June, and the taxpayer serves a shish kabob dinner for \$10 per person. (Taxpayer Ex. #9, p. 23; Tr. pp. 17, 45-52)

⁶ The evidence is unclear concerning the current ownership and use of the apartments. (Tr. pp. 123-125)

17. On most Fridays during the year, the taxpayer serves fried fish dinners to the public. The taxpayer charges \$11 for catfish and \$9 for walleye and chicken. The taxpayer will cancel the fish fry if someone needs the hall for a fundraiser. (Taxpayer Ex. #9, p. 24; Tr. pp. 50-51, 128)
18. The taxpayer filed ST-1s, Sales and Use Tax Returns, for the months of January through August, November, and December of 2012 for the sales of food that it sold at the Supper, Shish Kabob, and fish fries. These food sales are the only sales accounted for on the taxpayer's books and records. (Taxpayer Ex. #11; Tr. pp. 100, 103-107)
19. All of the income from the sale of drinks at the taxpayer's events (*i.e.*, the Supper, Shish Kabob, and fish fries) is included in the Banquet income. (Tr. pp. 52-53, 100, 120, 138)
20. In addition to the taxpayer's events, sometimes the hall is used for events such as wedding receptions or political events for which there is a charge for the food and bar services.⁷ When that happens, all of the income from the whole event goes to the Banquet. (Tr. pp. 12, 17, 97-99, 117-119)
21. Sometimes the hall is used by either charitable, religious, educational, or governmental organizations for various events including fundraising. The taxpayer may allow the use for free or ask for a "nominal" fee. If a fee is received, the income goes to the Banquet. If drinks are sold at the event, all of the income from the sale of drinks goes to the Banquet. (Dept. Ex. #1, pp. 110-168; Taxpayer's Ex. #10; Tr. pp. 56, 61-62, 100)
22. The taxpayer has no capital, capital stock, or shareholders. (Dept. Ex. #1, pp. 65-71)

⁷ At the time of the hearing, the charge was \$22 per person for events such as weddings. (Tr. pp. 79, 97-98)

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 for personal property sold to these organizations. See 35 ILCS 120/2-5(11). Therefore, in order to receive the exemption identification number, the taxpayer must be “organized and operated” exclusively for charitable purposes. See also 86 Ill. Admin. Code §130.2005(j)(3). The term “exclusively” is not interpreted literally to mean the entity’s sole purpose; it is construed to mean the primary purpose. Yale Club of Chicago v. Department of Revenue, 214 Ill. App. 3d 468, 473 (1st Dist. 1991); Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430, 436 (1st Dist. 1987).

In order to determine whether the taxpayer is organized and operated exclusively for charitable purposes, the following factors are considered: (1) whether the benefits derived are for an indefinite number of people, persuading them to an educational or religious conviction, for their general welfare or in some way reducing the burdens of government; (2) whether the organization has no capital, capital stock or shareholders, earns no profits or dividends, but rather derives its funds mainly from public and private charity and holds them in trust for the objects and purposes expressed in its charter; (3) whether the organization dispenses charity to all who

need and apply for it, does not provide gain or profit in a private sense to any person connected with it, and does not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses; and (4) whether the primary purpose of the organization, not any secondary or incidental purpose, is charitable. Wyndemere Retirement Community v. Department of Revenue, 274 Ill. App. 3d 455, 459 (2nd Dist. 1995) (citing Methodist Old Peoples Home v. Korzen, 39 Ill. 2d 139, 156-57 (1968)).⁸ 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. Rogy's New Generation, Inc. v. Department of Revenue, 318 Ill. App. 3d 765, 771 (1st Dist. 2000); Wyndemere, *supra*; Gas Research Institute, *supra*. It is well-settled that tax exemption provisions are strictly construed in favor of taxation. *Id.*; Heller v. Fergus Ford, Inc., 59 Ill. 2d 576, 579 (1975). All facts are construed and all doubts are resolved in favor of taxation. *Id.* To prove its case, a taxpayer must present more than its testimony denying the Department's determination. Sprague v. Johnson, 195 Ill. App. 3d 798, 804 (4th Dist. 1990); 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 taxpayer argues that its primary purpose is charitable in nature, and it serves to ease the burdens of government. The taxpayer believes that the only factor at issue is whether the

⁸ Because these factors are also used to analyze charitable exemptions from property taxes, cases involving property taxes will also be cited. See Wyndemere, *supra*.

taxpayer derives its funds mainly from public and private charity, and this factor alone does not invalidate the exemption. The taxpayer believes that it serves an indefinite number of people and reduces the burdens of government because it offers its facility to governmental, charitable, educational, and religious organizations for either free or nominal cost. The taxpayer claims that it gives food to the needy for free, offers the use of its personal property for free, and donates to charities; also, there are no restrictions on who can use the facility.

In addition, the taxpayer has no capital, capital stock or shareholders and claims that it earns no profits or dividends. The majority of the income is derived from the dinners it serves (with additional income from membership dues and donations) and is held in trust for the objects and purposes expressed in its charter. Although the majority of the income is not from donations, in Highland Park Women's Club v. Department of Revenue, 206 Ill. App. 3d 447 (2nd Dist. 1990), the majority of the taxpayer's income was from ticket sales, with additional income from a few other sources including food stands and a gift shop. The court allowed a property tax exemption and stated that the land containing the food stands and gift shop constituted only a small portion of the property. *Id.* at 464. In addition, the primary use of property was to foster appreciation of the arts through artistic events. The taxpayer contends that the present case is similar because the taxpayer's activities are directed to charity, and the primary use of the facility is for charitable purposes. The taxpayer contends that its dinners are only 10% to 15% of the use, the Banquet's use is at most 8%, and the remainder (77% to 82%) is used exclusively for charitable, educational, religious, and/or governmental purposes. Finally, the taxpayer argues that the remaining factors are met because the events and the facility are available to anyone who wants to either use it or attend, and a person who wants to use the facility only needs to make a phone call to confirm availability.

The Department argues that the taxpayer's primary purpose is not charitable; rather, the taxpayer is a member organization with purposes aimed at personal fellowship and unification. The Banquet shares the facility and also the functions within the facility with the taxpayer. The Department contends that some of the shared functions and resources appear to have "unrecognizable lines of distinction." (Dept. brief, p. 3) The "blurred lines" include the use of the building, the ownership of its contents, and the rights to the income sources. *Id.*

The Department concedes that there is no capital, capital stock, or shareholders, and nothing indicates that there is any private inurement. The Department states, however, that the primary source of income is from the two large suppers and the weekly fish fries. The income derived from donations is minimal compared to the overall income from the other activities. In addition, other than the minimal amount of money that the taxpayer gives away, the taxpayer claims that its charity is the community's use of the facility at minimal or no cost. The Department argues that merely offering a banquet facility to the public is not really charity, and the property is not primarily used for charitable purposes. The Department contends that this case is similar to the cases of Rotary International v. Paschen, 14 Ill. 2d 480 (1958) and Kiwanis International v. Lorenz, 23 Ill. 2d 141 (1961), where the Supreme Court found that both organizations were not primarily charitable but were formed more for fellowship and community. The taxpayer operates a civic or fellowship organization that derives virtually all of its income from either public dinners or membership dues, and the taxpayer has failed to meet the requirements for an exemption.

In response, the taxpayer claims that, unlike the cases of Rotary International and Kiwanis International, the taxpayer's activities are focused on providing benefits to governmental organizations and the public rather than its members, and there is no third party

between the taxpayer and the benefits it gives to the public. Neither of those cases had evidence that the property was used for governmental or other charitable purposes. In the present case, the taxpayer claims that its property is regularly used for charitable purposes directly by the public and not through local membership organizations.

With respect to the Department's argument that the taxpayer and the Banquet have "unrecognizable lines of distinction," the taxpayer believes that the testimony showed the opposite, and the purpose of the Banquet is to provide a clear line of distinction. The taxpayer also claims that the issue is not the source of funds but the use of those funds. The taxpayer argues "there is no evidence or suggestion" that the taxpayer uses the funds other than to charitably support the community without financial gain to the members of the taxpayer. (Taxpayer's Reply brief, p. 6) The taxpayer believes that its profitable events are a small portion of the use of the property, and an exemption is warranted.

The evidence presented by the taxpayer is not sufficient support its claim for an exemption identification number because the taxpayer's activities are either not substantiated or do not indicate that the taxpayer operates primarily for charitable purposes. Although the taxpayer does not have capital, capital stock or shareholders, the taxpayer did not provide documentary evidence to show its complete financial information for any year (fiscal or calendar) after the Banquet was incorporated as a separate entity (on August 19, 2010). The taxpayer provided only two financial statements that cover an entire year, but both of them include time periods when the Banquet and the taxpayer were still one entity. Both the audited financial statement for the year ending June 30, 2009 (Taxpayer Ex. #9, pp. 14-22; Dept. Ex. #1, pp. 100-108) and the 2010 Profit & Loss statement (Dept. Ex. #1, pp. 98-99) include time periods when the Banquet was part of the taxpayer until it was "spun off" on August 19, 2010.

Because the Banquet is a for-profit corporation, the financial statements that include the Banquet's income are not relevant to determining whether the taxpayer currently operates exclusively for charitable purposes.

The only financial information that the taxpayer provided for the years after it became a 501(c)(3) corporation (on September 1, 2010) were monthly financial statements for June through October 2011 (Dept. Ex. #1, pp. 94, 92, 89, 87, 86; Taxpayer's Ex. #9, pp. 4-8). Although income and expenses for the months of June through October 2011 are relevant, the testimony indicated that the taxpayer has a fish fry nearly every week, and its biggest fundraiser is in November. The taxpayer also provided its ST-1s, Sales and Use Tax Returns, for the months of January through August, November, and December of 2012. (Taxpayer Ex. #11) Although these returns show the sales for those months, they do not provide a complete financial picture that would include all of the income as well as the expenses.

Even from the financial statements provided, the sources of the taxpayer's income and the taxpayer's expenses are not exactly clear. The financial statements for June through October 2011 do not show any income from "Membership Dues." Although those statements show income from "Donation," and the taxpayer's manager referred to the membership dues as "Donations" (tr. p. 129), it is still not clear if the membership dues are the amount shown as "Donation" on the statements.

In addition, the Banquet allegedly pays the taxpayer "a donation" for renting the facility (tr. pp. 97-98), and the taxpayer's protest indicates that the taxpayer receives "a minimal amount of rental" from the Banquet. (Dept. Ex. #1, p. 4) The amount of this rental income, however, was not disclosed. Furthermore, the taxpayer's financial statements for June through October 2011 do not show "Rental income," and the Banquet's financial statements for the same time

period do not show “Rental expense.” (Taxpayer’s Ex. #9, pp. 9-13) Moreover, the taxpayer claims that it gives monetary and food donations. (Tr. p. 94) Although the documents include what appears to be a partial list of these expenses (Taxpayer’s Ex. #7, p. 12), neither of these expenses is listed on the limited financial statements that the taxpayer provided. Without financial information, it is unclear how much money the taxpayer gives to local charities or spends on its food basket program. The taxpayer did not provide accurate or complete financial information for either the year 2011 or 2012.

Without complete financial information for any year after the taxpayer separated from the Banquet, it is impossible to determine whether the taxpayer operates as a charitable organization. As the taxpayer acknowledges in its Reply brief, the use of its funds (in addition to the source of the funds) is critical for determining whether the taxpayer is a charitable organization. (Reply brief, p. 6) To prove its case, a taxpayer must present more than its testimony denying the Department's determination. Sprague, supra; Balla, supra. The taxpayer must present sufficient documentary evidence to support its claim. *Id.* A finder-of-fact is not bound to accept un-rebutted testimony. Franciscan Communities, Inc. v. Hamer, 2012 IL App (2d) 110431, ¶47. The lack of complete financial information to substantiate the taxpayer’s income and expenses warrants denial of the exemption.

Furthermore, even with the limited information provided by the taxpayer, the evidence does not support a finding that the taxpayer operates primarily as a charitable organization. The taxpayer concedes that the majority of its income is from the 3 types of dinners that it serves: the Supper, Shish Kabob, and fish fries. (Tr. p. 129) Pure donations from the public are “very minimal.” (Tr. p. 130) The taxpayer’s income, therefore, is not mainly from public and private charity. As the taxpayer has correctly stated, failing to meet this factor is not determinative. See

Provena Covenant Medical Center v. Department of Revenue, 384 Ill. App. 3d 734, 746 (4th Dist. 2008), *aff'd*, 236 Ill. 2d 368 (2010) (citing American College of Surgeons v. Korzen, 36 Ill. 2d 340, 348 (1967)).

Nevertheless, the remaining evidence raises concerns as to whether the taxpayer would be entitled to the exemption. The taxpayer contends that it gives “charity” by allowing governmental, charitable, educational, or religious organizations to use its facility either for free or a nominal cost. (Tr. pp. 130-132) The use of its facility by these organizations does not necessarily mean that the taxpayer operates primarily for charitable purposes. First of all, the taxpayer did not provide sufficient documentation to show the actual use of the facility after the taxpayer became a 501(c)(3) corporation. In order to know the actual use, evidence is needed of the exact dates when the facility was used, who used the facility (*i.e.*, the taxpayer, a member, or another type of organization), how much (if anything) was paid for the use, and whether there was a cash bar during the event. The taxpayer provided letters from several organizations that have used the facility (Taxpayer Ex. #7), but only some of the letters have the actual date when the facility was used, some of the letters are dated prior to September 1, 2010 (*i.e.*, before the taxpayer became a 501(c)(3) corporation), and most of the letters do not include whether an amount was paid and how much was paid. The evidence also does not include how often the facility was used by members.⁹

Although the taxpayer provided some oral testimony regarding the use of the facility, the taxpayer must present sufficient documentary evidence to support its claim. Sprague, *supra*; Balla, *supra*. The manager testified concerning the Banquet’s estimated use of the facility (tr. pp. 102-103), but the estimation did not include events during which drinks were sold. (Tr. pp.

⁹ The by-laws indicate that there is an annual meeting for the members (Taxpayer Ex. #5), and special meetings may be called, but it is not clear how often the members actually meet at the facility. Members are also allowed to use the taxpayer’s pavilion or a small room at the facility at any time. (Tr. p. 127)

117-120) The testimony indicated that the bar has only one cash register, which is used solely for the drink sales. (Tr. p 120) All of the income from that cash register goes to the Banquet. *Id.* If any drinks are sold at any event, the Banquet receives the income. (Tr. p. 100) The Banquet's use of the facility, therefore, is not limited only to those events for which full payment is received, such as wedding receptions. The Banquet's use includes every event during which drinks are sold, which could be nearly every event at the facility.

In other words, without further documentation, it is reasonable to assume that drinks would be sold at nearly every event, and because the Banquet receives the income from the drink sales, the Banquet's use of the facility is nearly every time that an event is held there. The Banquet does not own ANY property, real or personal. (Tr. pp. 135-136) Its sole purpose is to take income that is generated from the taxpayer's property, and the primary use of the property appears to be to generate income for the Banquet. Although some events may be pure charity with no drink sales, the taxpayer did not provide any documentation to support when this happens.

Furthermore, as the Department has indicated, the distinction between the taxpayer and the Banquet is not exactly clear, and from the evidence presented, they do not operate in the manner in which the taxpayer told the IRS they would operate. On July 29, 2010, the taxpayer sent a letter to the IRS in order to obtain the 501(c)(3) designation. (Dept. Ex. #1, pp. 10-12) In that letter, the taxpayer explained how it expected the taxpayer and the Banquet to operate and stated that the Banquet corporation "would have its own management separated entirely from the [taxpayer]. ... The [Banquet] would ... [do] its own payroll ... under its independent management arrangement. The company would be responsible for hiring its own employees. ... the [Banquet] would make independent determinations as to charges for leasing and other uses

with no assistance or input from the [taxpayer].” (Dept. Ex. #1, p. 10) The letter further stated that “the [taxpayer] would have only two paid employees, the manager and a secretary, both separate from the new corporation.” (Dept. Ex. #1, pp. 10-11)

Despite these contentions, the testimony indicated that the taxpayer’s only two regular employees (the manager and secretary) work for both the taxpayer and the Banquet. (Tr. pp. 28-29, 43) There is only one person, the manager, who handles both the taxpayer’s and the Banquet’s income and expenses. (Tr. p. 97) The manager keeps track of his hours and how much time is spent between the taxpayer and the Banquet. (Tr. pp. 28-29, 97) He adjusts his salary so that a portion of it is paid by the Banquet.¹⁰ *Id.* Although it was not exactly clear how the leasing charges are determined, the sole manager appears to make that determination.¹¹

In addition, as the Department has stated, the evidence suggests that the taxpayer is a membership organization that is similar to the ones in the cases of Rotary International, *supra*, and Kiwanis International, *supra*, because the primary purpose of the taxpayer, as stated in its by-laws, is to unite all persons originating from the town of Happyville, Happyville (in addition to their spouses and descendants). Although the purpose includes benefitting charities, it also includes uniting these people in social activities to improve the relationships among themselves. In Rotary International, *supra*, the court stated that Rotary’s objective was “to encourage and foster the ideal of service as a basis of worthy enterprise,” and while its aims were commendable, they were not charitable. Rotary International at 488. In Kiwanis International, *supra*, the court found that the Kiwanis clubs were formed by business and professional men “for exchanging experience, for fellowship, and to improve their leadership in the community.” Kiwanis

¹⁰ The manager testified that he does not always cash his paycheck. (Tr. p. 13)

¹¹ The testimony did indicate that if someone who has had a tragedy in their family calls and would like to have a fundraiser at the taxpayer’s facility, the taxpayer tells them there is not an initial charge for the use of the facility, but if they make enough money, they can donate between \$200 and \$400 to pay for the setup, utilities, microphone system. The taxpayer waits until the event is over to see if they made enough money. (Tr. pp. 55-56)

International at 146. The court stated that while the purposes were laudable and many of the activities of the local clubs were charitable, Kiwanis had other important purposes: the social, professional, and business advancement of its members. *Id.* The court concluded by stating that Kiwanis, like Rotary, does philanthropic work of public value, but each organization contains an element of personal advantage to their members. *Id.* In the present case, it is not clear that the taxpayer is primarily organized and operated for charitable purposes.

As previously stated, exemption provisions are strictly construed, and the taxpayer must prove by clear and convincing evidence that it is entitled to the exemption. Rogy's New Generation, *supra*; Wyndemere, *supra*; Gas Research Institute, *supra*; Heller, *supra*. In exemption cases, the taxpayer must present more than testimony; it must present sufficient documentary evidence to support its claim. Sprague, *supra*; Balla, *supra*. The finder-of-fact is not bound to accept un-rebutted testimony. Franciscan Communities, Inc., *supra*. Without documentation to support the taxpayer's claims, it cannot be found that 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 denied.

Linda Olivero
Administrative Law Judge

Enter: June 10, 2014