

ST 14-28

Tax Type: Sales Tax

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)	XXXXX
OF THE STATE OF ILLINOIS)	Sales Tax Exemption
)	
v.)	
)	
ABC ASSOCIATION,)	
)	Kelly K. Yi
TAXPAYER)	Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. Robin Gill, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Ms. Angie McLaughlin on behalf of ABC ASSOCIATION.

Synopsis:

On May 11, 2012, the Department of Revenue of the State of Illinois (“Department”) issued a “Denial of Sales Tax Exemption” to The ABC ASSOCIATION¹ (“Taxpayer”) denying its 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 retailers’ occupation tax as set forth in 35 ILCS 105/1 *et seq.* Taxpayer protested the Department’s decision and requested an administrative hearing. In lieu of a hearing, the parties subsequently submitted “Joint Stipulation of Facts and Waiver of Oral Hearing,” (“Stipulation”) along with Department Exhibit 1, consisting of 160 pages, inclusive of the exemption application, the denial by the Department, Taxpayer’s request for hearing, and other various documents offered by the

¹ Taxpayer’s Bylaws indicates that the name of the organization shall be “ABC Association.” Dept. Ex. 1, p. 25.

Taxpayer. Stipulation and Dept. Ex. 1. 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 Department's case, inclusive of all jurisdictional elements, is established by the admission into evidence of the Department's denial of exemption dated May 11, 2012. Dept. Ex. 1, p. 2.
2. Taxpayer was organized in 2000 by leaders of free clinics under its former name, The XYZ Association "to coordinate networking and education activities for Illinois free clinics." Dept. Ex. 1, pp. 40, 43. In 2004, XYZ Association was incorporated as a not-for-profit organization, involuntarily dissolved in 2008 for failing to file an annual report, and later, in August 2011, reinstated under its current name by way of Articles of Amendment. Dept. Ex. 1, pp. 19-24.
3. In 2011, Taxpayer received grants totaling \$XXXX from three private charities intended to support the first-year start-up and infrastructure development, namely to support the personnel costs of two employees, develop a highly functional website, secure memberships, identify grant prospects, make legislative contacts, and increase capacity for free and charitable clinics across Illinois. Dept. Ex. 1, pp. 62-75.
4. Taxpayer's mission and powers, according to its Bylaws, are to improve "access to quality healthcare for economically disadvantaged individuals who are uninsured or underinsured" by: 1) strengthening free and charitable clinics' ability to provide services, develop resources, and engage stakeholders; 2) fostering partnership to advance the overall capacity, quality, effectiveness, sustainability and affordability of the state healthcare safety net; 3) educating the public to increase awareness regarding free and charitable clinics' favorable impact on

community wellness, healthcare costs, quality and access; and 4) advocating for health policy and financing mechanisms that advance access to quality, affordable health services for economically disadvantaged individuals. Dept. Ex. 1, p. 25.

5. From September 2005 Taxpayer was exempt from federal income taxes as an entity described in Section 501(c)(3) of the Internal Revenue Code until its revocation as of November 15, 2010² due to non-filing of tax returns for three years. Dept. Ex. 1, pp. 59, 76-77. Taxpayer applied for a reinstatement of federal income tax exemption in March 2012, but the evidence shows no record from Internal Revenue Service that it was granted. Dept. Ex. 1, pp. 4-16.
6. Taxpayer has two classes of membership: Full voting membership and Associate non-voting membership. Membership is neither transferrable nor assignable. The membership dues are scaled based on the cash operating budget sizes of organizations and commensurate with the value of association benefits for full and associate members. Dept. Ex. 1, pp. 25-27.
7. Taxpayer's full membership is limited to free clinics and charitable clinics that meet the following criteria: 1) organization must be a 501(c)(3) or a component program of a 501(c)(3) organization; 2) organization or a component of organization provides a range of health services; 3) patients served are predominantly economically disadvantaged and uninsured or underserved; 4) services are provided either at no cost to the patient or at a nominal or low cost, but no patient is denied essential services based on inability to pay. "Essential" services are those that are critical to the organization's mission as determined by the organization's Board of Directors; 5) organization is volunteer based such that the organization or program meets the requirements of the Illinois Good Samaritan Law. If not

² The IRS issued conflicting dates as to the actual date of revocation of Taxpayer's Section 501(c)(3) exempt status, another date being November 15, 2011. Dept. Ex. 1, pp. 47, 76-77.

volunteer based, organization, meets criteria (1) through (4) above; and 6) organization is not a Federally Qualified Health Center (FQHC) or FQHC Look-Alike. Dept. Ex. 1, pp. 25-26, 95.

8. Once the threshold membership criteria are met, the full membership must satisfy additional following requirements: 1) complete and submit an application with membership fee; 2) provide statistical information requested; 3) comply with reports related to grants; 4) abide by the By-laws of ABC Association; and 5) participate in ABC Association committees; 6) remain in good standing. Dept. Ex. 1, pp. 26, 95.
9. Full membership annual fees range from \$XXX to \$XXXX³ and the benefits of full membership are: 1) networking, training, access to best practices; 2) funding opportunities; 3) advocacy and collective voice; and 4) group purchasing discounts. Dept. Ex. 1, p. 95.
10. Taxpayer's associate membership is available to individuals or organizations that support the Taxpayer's mission, vision and values. Annual associate membership dues are \$XXXX for individuals, \$XXXX for organizations, with reduced membership benefits of networking, information, fee-based trainings, and direct involvement in health policy issues related to the health care safety net. Dept. Ex. 1, p. 96
11. In its reinstatement "Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code," Exhibit B, Part 3, Membership & Leadership, it is noted that "ABC Association is a membership organization whose membership criteria, voting rights and governance are established by its bylaws." Dept. Ex. 1, p 44.
12. Taxpayer has 10 to 15 volunteer Directors, of which at least 50% are leaders from free or charitable clinics. Dept. Ex. 1, p. 96.

³ Taxpayer's full membership fees of \$XXX-\$XXX in 2012 doubled to \$XXX-\$XXX, but the record is unclear as to when the changes were implemented. Dept. Ex. 1, pp. 95, 119.

13. Taxpayer's Bylaws, Article X, Section 5, No Inurement of Income, further state that "No part of the earnings of the corporation shall inure to the benefit of, or be distributable to, its members, Directors, officers or other private persons, except the corporation shall be authorized and empowered to pay reasonable compensation for services rendered." Dept. Ex. 1, p. 36.
14. Taxpayer's Form 990-EZ for 2005, the only tax return submitted as evidence, shows that 100% of its "Total revenue" of \$XXXX came from "Program service revenue including government fees and contracts," and it had expenses of \$XXXX spent on "a conference for people in Illinois who are involved in providing free medical & dental services to uninsured individuals of Illinois." Dept. Ex. 1, pp. 49-50.
15. Taxpayer's audited financial statements reflect that in fiscal year 2012, it had \$XXXX of revenue over expenses of \$XXXX. It collected \$XXXX in "Membership dues," \$XXXX in "Foundation and other grants," and \$XXXX in "Interest and dividends." Of the total expenses, \$XXXX was for program services, of which \$XXXX was for contract labor; \$XXXX for supporting services; \$XXXX for fundraising services. Dept. Ex. 1, pp. 154-156.
16. In fiscal year 2013, according to the audited financial statements, Taxpayer had \$XXXX of revenue over expenses of \$XXXX; it collected \$XXXX in "Membership dues," \$XXXX in "Foundation and other grants," and \$XXXX in "Interest and dividends." Taxpayer had program services expenses of \$XXXX, of which \$XXXX was for contract labor and salaries; supporting services expenses of \$XXXX; fundraising services expenses of \$XXXX. Dept. Ex. 1, pp. 154-156
17. Taxpayer's most recent financial statement covering approximately a 9 month period of July 1, 2013 - March 20, 2014 reflects that it had \$XXXX of revenue over expenses of \$XXXX.

Of the total revenue, \$XXXX is from membership dues; \$XXXX is from foundation grants; \$XXXX is from individual donations; \$XXXX is from interest income; and \$XXXX is from services to members/others through conference registration fees and exhibit space income. Taxpayer's expenses are divided into personnel costs, including Executor Director's base pay of \$XXXX plus benefits, office and equipment, communications, travel and memberships, professional fees, and "project related to outside services," consisting of \$XXXX as "Stipends to Clinics." Dept. Ex. 1, pp. 148-149.

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)).

Taxpayer has requested an exemption identification number pursuant to these provisions, which the Department has denied on the basis that it did not demonstrate that it operates exclusively for charitable purposes. Dept. Ex. No. 1, p. 2. 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).

An examination of the record establishes that Taxpayer has not demonstrated, by the presentation of exhibits, evidence sufficient to warrant an exemption from sales tax as an association organized exclusively for charitable purposes. Accordingly, under the reasoning given below, the determination by the Department denying Taxpayer a sales tax exemption number should be affirmed. In support thereof, I make the following conclusions:

In Methodist Old Peoples Home v. Korzen, 39 Ill. 2d 149 (1968) ("Korzen"), the Illinois Supreme Court outlined several factors to be considered in determining whether an entity is an institution of public charity: (1) the benefits derived are for an indefinite number of person [for their general welfare or in some way reducing the burdens on government]; (2) the organization has no capital, capital stock or shareholders; (3) funds are derived mainly from private and public charity, and the funds are held in trust for the objects and purposes expressed in the charter; (4) the charity is dispensed to all who need and apply for it, and does not provide gain or profit in a private sense to any person connected with it; and (5) the organization 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 at 157. These factors are balanced with an overall focus on whether and how the organization serves the public interest and lessen 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 Taxpayer is "an institution of public charity" under the terms of Korzen. I conclude, based on the documentary evidence presented, that it is not an "institution of public charity."

Of the five characteristics discussed in Korzen, the Department concedes that Taxpayer has no capital, capital stock, or shareholders, and earns no profit or dividends, but rather derives its funds mainly from private and public charity and hold them in trust for the purposes express in its charter. Department's Legal Argument, p. 4. As there is no dispute regarding second and third Korzen characteristics of a charitable institution, this recommendation is narrowed to a discussion of the remaining three characteristics.

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). Taxpayer was incorporated in 2004 as an Illinois not-for-profit corporation. Its purposes, according to its Bylaws, are to improve access to quality healthcare for economically disadvantaged individuals who are uninsured or underinsured by: 1) strengthening free and charitable clinics' ability to provide services, develop resources, and engage stakeholders; 2) fostering partnership to advance the overall capacity, quality, effectiveness, sustainability and affordability of the state healthcare safety net; 3) educating the public to increase awareness regarding free and charitable clinics' favorable impart on community wellness, healthcare costs, quality and access; and 4) advocating for health policy

and financing mechanisms that advance access to quality, affordable health services for economically disadvantaged individuals. Dept. Ex. 1, p. 25.

Taxpayer did not submit a brief setting forth its arguments, but its essential argument appears that it is entitled to a sales tax exemption because it is a not-for-profit organization that indirectly improves access to quality healthcare for economically disadvantaged persons by assisting the interests of its free and charitable member clinics.

There are problems with this argument. 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 documentary evidence admitted, I conclude that Taxpayer’s primary purpose is not to “improve access to quality healthcare for economically disadvantaged individuals who are uninsured or underinsured,” as written in its Bylaws. Rather, Taxpayer’s primary purpose is to assist its dues-paying member clinics secure funding, maintain quality management, advocate for health policy favorable to the member clinics, at a secondary benefit to their patients, and educate the public of the member clinics’ services, primarily to ensure success and longevity of the member clinics. See Dept. Ex. 1, pp. 88-91. This is particularly

evident in Taxpayer's financial statements which attest that not until fiscal year 2014, a decade after its incorporation as a not-for-profit organization in 2004, Taxpayer has directly distributed any funds in furtherance of its stated mission. A vast majority of expenses have been confined to the operation of Taxpayer's organization itself, such as salaries, office and equipment, website maintenance, travel, and professional services. Of the total revenue of approximately \$XXXX since its reinstatement, from 2011 through March of 2014, not counting a gap of 5 years due to lack of funding and attendant inactivity, only a miniscule percentage of funds, \$XXXX were distributed as "Stipends to Clinics." Dept. Ex. 1, pp 148-149. These stipends represent 2% of Taxpayer's total revenues of past 4 years. The record is silent as to which clinics actually received the stipends, but given its structure and membership requirements, it would not be unreasonable to infer that the stipends went to the member clinics only. This would support a position that Taxpayer's foremost priority is to serve the interests of its membership over the public's interests in ensuring a wide availability of charity healthcare statewide, rather than more funding for Taxpayer's membership.

As laudable as Taxpayer's mission, I fail to see how its work, separate from the work of its membership clinics, can be described as charity. Just as a consultant or lobbyist who provides a valuable business advice or lobby on behalf of an organization is not dispensing charity, Taxpayer, likewise, is not dispensing charity to anyone. Taxpayer's essential function is akin to an industry interest group formed to represent the interests of its dues-paying members. Taxpayer's website points out that Taxpayer "was formed to help strengthen and grow Illinois' free and charitable clinics." Dept. Ex. 1, p. 109. Its "Narrative History of Organization" reveals that Taxpayer, under its former name XYZ Association, was organized in 2000 by leaders of the free clinics, the very group that stood to benefit from the establishment of Taxpayer organization,

“to coordinate networking and education activities for Illinois free clinics.” Dept. Ex. 1, p. 43. Nowhere in the description of the work or services Taxpayer provides, there is a mention of the word “charity” or “charitable.” Free and low cost healthcare the member clinics provide to the public cannot be attributed to Taxpayer’s charitable purpose.

An indirect benefit ultimately conferred upon the public is secondary to Taxpayer’s primary purpose of serving the member clinics. In applying the characteristics set in Korzen, the court in Board of Certified Safety Professionals of the Americas, Inc. v. Johnson, 112 Ill.2d 542, 98 Ill.Dec. 363, 494 N.E.2d 485 (1986) (“Board”), affirmed the Department’s denial of property tax exemption to the Board of Certified Safety Professionals of the Americas, Inc., a not-for-profit corporation that issues certificates to safety professionals who pass examinations it conducts. The court noted that the Board’s activities benefit primarily a particular class of people, namely safety professionals, and only indirectly the general public. The court opined that the public benefits of the activities of the members of the safety profession are the result of services rendered by those members, who would perform the same function with or without Board certification. Further, the court ruled that the Board’s activities do not reduce the State’s burdens since the State does not license or register safety professionals. Board at 546.

Similarly, in Du Page County Board of Review et al., v. Joint Commission on Accreditation of Care Organizations et al., 274 Ill.App.3d 461, 654 N.E.2d 240, 210 Ill.Dec. 941 (2nd Dist. 1995) (“Joint Commission”), the court affirmed the circuit court’s ruling in reversing the Department’s finding of tax exemption that Joint Commission’s primary activities of development of standard setting, on-site evaluations, decision-making to grant or deny accreditation, and recommendation to improve standard compliance for health organizations, all of them, not-for-profit organizations, did not benefit indefinite number of persons. Rather, the

court agreed with the circuit court ruling that Joint Commission's work only provided an indirect benefit to an indefinite number of persons, while the direct beneficiaries of the Joint Commission's work were “the health care providers who, when accredited by the Joint Commission, are able to receive reimbursement from both private and public sources of funding (i.e., private insurance and [M]edicare or [M]edicaid).” Joint Commission at 464, 469.

In the instant case, as in Board and Joint Commission, the public benefits of the activities of Taxpayer are the result of services rendered by those member clinics, which would perform the same function of healing the uninsured and underinsured with or without Taxpayer's services. Taxpayer's activities do not directly benefit an indefinite number of persons or reduce a burden on government, which are characteristics of a charitable organization. It is not the Taxpayer but the member clinics that presumptively lessen government burden to provide healthcare to the underprivileged persons. There is no government burden to assist a membership based organization, somewhat similar to a professional or trade organization, formed by the leaders of the very group it intended to benefit. There is no government burden to promote a more efficient management of the member clinics, which can be characterized as Taxpayer's core function, as its role was clarified by Taxpayer's Executive Director Jane Doe. Ms. Jane Doe wrote to the Department on March 20, 2014 that Taxpayer provides “needed services, such as technical assistance, information and referrals, and collaboration opportunities to free and charitable clinics across the state.” Dept. Ex. 1, p. 147. In an apparent attachment to Taxpayer's introductory newsletter distributed in May 2012, under “WHO WE ARE,” it is stated that Taxpayer “helps free and charitable clinics move effectively into the future; connects patients with clinics; and helps many stakeholder organizations who wish to work with or help clinics.” Dept. Ex. 1, p. 109.

As the court discussed in Institute of Gas Technology v. Department of Revenue, 289 Ill. App. 3d 779 (1st Dist. 1997), it is important to highlight that all of Taxpayer's work here goes to benefit a specific group. Its member clinics are primary beneficiaries of Taxpayer's efforts to increase the member clinics' revenue streams, strengthen their overall capacity and quality management, educate the public of the member clinics' services, and advocate for health policy favorable to the member clinics and patients. See Dept. Ex. 1, pp. 88-91. Taxpayer's services are unavailable to the general public, nor to non-member free and charitable clinics that perform a bulk of healthcare charity work⁴ towards Taxpayer's stated mission. It is only the member clinics, which consist of a small minority of free and charitable clinics in Illinois, directly benefit from Taxpayer's full range of services. If indeed Taxpayer's mission is to improve access to charity healthcare by assisting the providers, a logical position would be to support all free and charitable clinics in Illinois that share a common purpose, irrespective of membership. That is not the case here. I find that Taxpayer confers no direct benefit to the public, nor reduces a government burden. I conclude that Taxpayer has not met its burden of demonstrating by clear and convincing evidence (see Evangelical Hospitals, 223 Ill.App.3d at 231, 165 Ill.Dec. 570, 584 N.E.2d 1004) that it meets the first characteristic of Korzen.

The second and third Korzen characteristics of a charitable organization are not at issue as the Department concedes that Taxpayer possesses these two characteristics. I now examine the fourth characteristic which consists of a two-prong inquiry. The first-prong inquiry is whether the organization dispenses charity to all who need and apply for it. Taxpayer's membership eligibility requirements plainly demonstrate its services are not universally dispensed to all who need and apply for it. Taxpayer offers two classes of membership: Full

⁴ In April 2012, Taxpayer identified 56 free and charitable clinics in Illinois, of which 10 were Taxpayer's member clinics. Dept. Ex. 1, pp. 102-105.

voting members and Associate non-voting members. Membership is neither transferrable nor assignable. Full membership is exclusively limited to free clinics and charitable clinics which must meet Taxpayer's long list of requirements mentioned above. Associate membership is available to individuals or organizations that support the Taxpayer's mission, vision and values. The general public is not permitted to join at the full membership level. Taxpayer unmistakably is a membership organization, without evidence that any person or organization is exempt from the eligibility requirements.

Taxpayer's membership fees requirement further supports a finding that its services are not universally dispensed. Its membership dues are scaled based on the cash operating budget sizes of organizations and commensurate with the value of association benefits for full and associate members. Dept. Ex. 1, p. 26-27. The scale fee structure is positive to Taxpayer in this analysis, but no evidence was presented that the membership fees are ever waived. Instead, the record unequivocally affirms that membership is contingent upon payment of membership dues. Dept. Ex. 1, pp 95-96. The dues paid by its members give those members paying such monies privileges not provided to any member of the public, including other non-member free and charitable clinics, who may wish to utilize Taxpayer's services, such as a referral to their clinics and sharing funding opportunities. The record is devoid of evidence that Taxpayer has a written and advertised policy of waiving "membership fees" for a potential member that was financially unable to pay the fees. The "Membership" section of Taxpayer's Bylaws and Strategic Plan for FY2011 - FY2015 contain no indication that a potential member could enjoy Taxpayer's various benefits, at even the lowest membership levels, without making the required minimum annual membership fee of \$100 for full membership, \$50 for associate membership. Dept. Ex. 1, pp.

25-27, 95-96. I find that Taxpayer does not possess the first-prong of the fourth characteristic of a charitable organization.

The second-prong of the fourth characteristic of a charitable organization is whether Taxpayer provides 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). The record discloses that Taxpayer paid no salaries or contract labor in 2005. During fiscal year 2012, of \$XXXX total revenue, \$XXXX was spent on “contract labor,” with no wages paid. In fiscal year 2013, of \$XXXX total revenue, \$XXXX was spent on “contract labor” and \$XXXX was spent on salaries. Over approximately a 9 month period of July 1, 2013 - March 20, 2014, Taxpayer’s Executive Director received a base pay of \$XXXX plus benefits. Dept. Ex. 1, p. 148.

“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 is no evidence as to whether the compensation paid to unnamed contract labor and salary employees was reasonable or how they compared to those paid by similar organizations in the community. Without this evidence, I cannot conclude that the salaries and contract labor paid, which, in absolute terms may be reasonable, were not providing gain in a private sense to any person connected with Taxpayer.

The fifth and final Korzen characteristic of a charitable organization is whether the organization places obstacles of any character in the way of those who need and would avail

themselves of the charitable benefits it dispenses. Imposition of membership eligibility and fees requirements present a definite obstacle to those who may avail themselves of Taxpayer's services. The \$XXXX minimum full membership fee 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 Taxpayer'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 to show that a person or organization could become a "member" at any level without making the required contribution. Assuming, *arguendo*, that the promotion of a more efficient management of a specific group of clinics, albeit charitable clinics, were a charitable endeavor, Taxpayer's membership eligibility requirements, membership fees, membership levels, and the lack of a waiver provision for those unable to pay do not support a finding that Taxpayer 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 at 546.

As civic minded as its purpose, I conclude that Taxpayer exists, not for a charitable purpose, in the legal sense, but because of its members' mutual interests in the promotion of success and longevity of the member clinics through a more efficient management, at a secondary benefit to the public. Taxpayer, at the exclusion of all others, provides distinct benefits and "privileges" to its membership, depending on their level of membership:

"networking, training, access to best practices, funding opportunities, advocacy and collective voice, and group purchasing discounts." Dept. Ex. 1, p. 95. I conclude that Taxpayer has failed to meet the burden by presentation of clear and convincing documentary evidence the fifth Korzen characteristic that no person or organization is denied the benefit of Taxpayer's services despite an inability to pay.

In balancing Taxpayer's characteristics of a charitable organization with an overall focus on whether and how the organization serves the public interest and lessens the State's burden, as noted in Joint Commission, I conclude that Taxpayer confers no direct public benefit, nor reduces a government burden. Taxpayer is a fee and eligibility based membership organization with its services reserved exclusively for the member clinics. Its fee and eligibility requirements, without the waiver provision, are prerequisites to dispensing its services. The fourth and fifth Korzen characteristics that a charitable organization dispense charity to all who need and apply for it and place no obstacles in their way, are "more than guidelines." They are "essential criteria" and "go to the heart of what it means to be a charitable institution." Provena Covenant Medical Center v. Department of Revenue, 384 Ill. App. 3d 734, 750 (4th Dist. 2008), aff'd, 236 Ill. 2d 368 (2010). Although Taxpayer has no stocks or shareholders and derives its funds mainly from private charity, without it meeting the "essential criteria" above, I conclude that Taxpayer is not an institution of public charity.

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 exemption will cause damage to public treasuries and the overall tax base. In this case, Taxpayer 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). Taxpayer 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 Taxpayer a sales tax identification number be affirmed.

December 29, 2014

**Kelly K. Yi
Administrative Law Judge**