

ST 15-19

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**

**ABC BUSINESS,
APPLICANT**

v.

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

No: XXXX

Sales Tax Exemption

**Kenneth J. Galvin
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Ms. Jane Doe, *pro se*, on behalf of ABC Business; Ms. Paula Hunter, Special Assistant Attorney General, on behalf of the Department of Revenue of the State of Illinois.

SYNOPSIS: ABC Business (hereinafter “ABC Business”) sought an exemption from the imposition of tax under the Illinois Retailer’s Occupation Tax Act (35 **ILCS** 120/1 *et seq.*) and the Illinois Use Tax Act (35 **ILCS** 105/1 *et seq.*) as an entity organized and operated exclusively for charitable purposes. 35 **ILCS** 120/2-5; 105/3-5. The Department of Revenue denied ABC Business’s request, with ABC Business formally protesting and requesting a hearing following the issuance of the Denial of Sales Tax Exemption on May 31, 2013. Dept. Ex. No. 1.

An evidentiary hearing was held in this matter on October 2, 2014, with testimony from Jane Doe, CEO, Founder and President of ABC Business, John Doe, Technology Officer, Mary Green, ABC Business’s Training Coordinator and Polly Green. The sole issue to be determined at the hearing was whether ABC Business qualified for an exemption identification number as “a corporation, society, association, foundation or institution organized and operated exclusively for

charitable ... purposes.” 35 ILCS 120/2-5. Following a careful review of the evidence and testimony presented at the hearing, I recommend that ABC Business be granted an exemption identification number.

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 denial of exemption dated May 31, 2013. Tr. p. 5; Dept. Ex. No. 1.
2. ABC Business trains people for careers in technology related to entertainment in areas such as animation, video games, mobile development, scriptwriting, storyboarding, project management and leadership, “all those skills that it would take to either run an organization or start a small business.” “We encourage and provide to those who have a passionate interest in the field with immersive learning opportunities, mentoring services, world class trainers, industry insiders and experts with expertise and track records in the industry.” Tr. p. 7; Taxpayer’s Ex. No. 2.
3. The “mission” of ABC Business is to provide innovative training, mentorship and leadership skills for those not having the know-how or available resources to pursue their career goals in the entertainment technology arts industry. The “vision” of ABC Business is to inspire entertainment technology artists to push creativity, passion and their skills to the limit while utilizing productivity tools and practicing good business etiquette so that “prospective employers will be on the look-out for and reach out for talent coming out of ABC Business’s extensive and intensive program to pursue their goals.” Tr. pp. 13-16; Taxpayer’s Ex. No. 2.

4. ABC Business offers the following workshops: Introduction to Video Game Design and Development, Animation and Graphics, Music and Sound Effects, Scriptwriting, Character Development and Storyboarding, Storyboarding and Storyboarding Art, Conceptual Art and Drawing, Game Engine and Programming, Introduction to Mobile Applications Development, Machinima (the game engine to create animated stories) and Project Management: Pipeline/Workflow and the Game Design Document, Getting Started with Android and Digital Artists Workshop. The advertisements for the workshops state that they are free. Tr. pp. 8-12; Taxpayer's Ex. No. 1.
5. ABC Business also sponsors free exploratory workshops to train and inform minorities about the video game and mobile applications industry. ABC Business sponsors a free eight-hour workshop on "Introduction to Video Game Design and Development." Taxpayer's Ex. No. 2.
6. ABC Business was incorporated under the Illinois "General Not For Profit Corporation Act" on January 19, 2011. ABC Business operates under Bylaws, adopted October 3, 2012. ABC Business is exempt from income tax under Section 501(c)(3) of the Internal Revenue Code as of March 20, 2013. Tr. pp. 17-18; Taxpayer's Ex. No. 3.
7. ABC Business had revenue of \$XXX in 2013. Jane Doe testified that all funding for ABC Business is coming out of her "personal pockets." ABC Business received one \$XX donation. ABC Business does not receive grants or funding from the State of Illinois. No salaries are paid. Jane Doe and her unpaid staff teach approximately 90% of the classes. Approximately 10% of the classes are taught by unpaid experts. XYZ Business allows ABC Business to use their business center at no charge on Saturdays.

Some classes are taught at public libraries. Tr. pp. 24-25, 28-29, 42-43; Taxpayer's Ex. Nos. 1 and 6.

8. ABC Business offers programs every other Saturday from 5:00 to 10:00 p.m. with an average enrollment of 12 to 18 people. Jane Doe also meets weekly online with 6 interns working on an animated film. Tr. pp. 27-28.

CONCLUSIONS OF LAW:

An examination of the record establishes that ABC Business has demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant an exemption from sales tax. Accordingly, under the reasoning given below, the determination by the Department denying the applicant a sales tax exemption number should be reversed. In support thereof, I make the following conclusions:

The applicant seeks to qualify for an exemption identification number as a "corporation, society, association, foundation or institution organized and operated exclusively for charitable...purposes[.]" 35 ILCS 105/3-5(4); 35 ILCS 120/2-5(11). 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, 231 (2d Dist.1991). Moreover, 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 exemptions "resolved in favor of taxation." Van's Material Co. Inc. v. Department of Revenue, 131 Ill. 2d 196 (1989).

In Methodist Old People's Home v. Korzen, 39 Ill. 2d 149 (1968), the Illinois Supreme Court outlined several factors to be considered in assessing whether an organization is actually

an institution of public charity: (1) the benefits derived are for an indefinite number of persons [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; (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.

The above factors are guidelines for assessing whether an institution is a charity, but are not definitive requirements. DuPage County Board of Review v. Joint Comm'n on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461 (2d Dist. 1995). Thus, a rigid formula is not to be applied to all fact situations but instead “courts consider and balance the guidelines by examining the facts of each case and focusing on whether and how the institution serves the public interest and lessens the State’s burden.” *Id.* at 469.

ABC Business trains people for careers in technology related to entertainment in areas such as animation, video games, mobile development, scriptwriting, storyboarding, project management and leadership, “all those skills that it would take to either run an organization or start a small business.” “We encourage and provide those who have a passionate interest in the field with immersive learning opportunities, mentoring services, world class trainers, industry insiders and experts with expertise and track records in the industry.” Tr. p. 7; Taxpayer’s Ex. No. 2. “The goal is to help aspiring individuals who wouldn’t otherwise have the resources to get the education they need in the field of entertainment technology.” Taxpayer’s Ex. No. 1.

The “mission” of ABC Business is to provide innovative training, mentorship and leadership skills for those not having the know-how or available resources to pursue their career goals in the entertainment technology arts industry. The “vision” of ABC Business is to inspire entertainment technology artists to push creativity, passion and their skills to the limit while utilizing productivity tools and practicing good business etiquette so that “prospective employers will be on the look-out for and reach out for talent coming out of ABC Business’s extensive and intensive program to pursue their goals.” Tr. pp. 13-16; Taxpayer’s Ex. No. 2.

ABC Business offers the following workshops: Introduction to Video Game Design and Development, Animation and Graphics, Music and Sound Effects, Scriptwriting, Character Development and Storyboarding, Storyboarding and Storyboarding Art, Conceptual Art and Drawing, Game Engine and Programming, Introduction to Mobile Applications Development, Machinima (the game engine to create animated stories), “Project Management: Pipeline/Workflow and Game Design Document,” Getting Started with Android and Digital Artists Workshop. Tr. pp. 8-12; Taxpayer’s Ex. No. 1. ABC Business offers programs every other Saturday from 5:00 to 10:00 p.m. with an average enrollment of 12 to 18 people. Jane Doe also meets weekly online with 6 interns working on an animated film. Tr. pp. 27-28.

ABC Business was incorporated under the Illinois “General Not For Profit Corporation Act” on January 19, 2011. ABC Business operates under Bylaws, adopted October 3, 2012. ABC Business is exempt from income tax under Section 501(c)(3) of the Internal Revenue Code as of March 20, 2013. Tr. pp. 17-18; Taxpayer’s Ex. No. 3.

Applying the guidelines from Methodist Old People’s Home, I find that ABC Business has presented clear and convincing evidence that it is, in fact, a charitable organization. ABC Business’s classes are advertised as “free.” Taxpayer’s Ex. No. 1. In 2013, ABC Business trained

over 500 students. Jane Doe testified that the 500 students attended for free.¹ “Everything is free.” According to her testimony, the funding for ABC Business comes out of her “own pocket.” Tr. pp. 7-8. ABC Business does not turn anybody away. ABC Business does not charge and it “wouldn’t charge you even if you had money to pay.” Tr. pp. 29-30. Jane Doe testified that over 90% of the students are college graduates who are unemployed or underemployed. The people that come to ABC Business “feel that they really need help and they usually don’t have any money.” “A lot of these people are looking for ways to pull their career together and put together a really nice portfolio to get a job or start their own company.” Tr. pp. 42-46. Ms. Polly Green testified that when students come to ABC Business’s classes, “they don’t pay anything.” Jane Doe “teaches them because she has a passion, and she has the skills to do what she is doing, and she wants to share those skills with others.” Tr. p. 42.

Because ABC Business’s classes are free, I conclude that ABC Business’s benefits are available to an indefinite number of persons. Because ABC Business advertises that the classes are free, I conclude that ABC Business does not place obstacles in the way of those who need and would avail themselves of the classes offered. Because ABC Business does not turn anyone away, I conclude that ABC Business’s charity is dispensed to all who need and apply for it.

ABC Business had revenue of \$XXX in 2013. Jane Doe testified that all funding for ABC Business is coming out of her “personal pockets.” ABC Business received one \$XX donation. ABC Business does not receive grants or funding from the State of Illinois. No salaries are paid. Jane Doe and her unpaid staff teach approximately 90% of the classes. Approximately 10% of the classes are taught by unpaid experts in the field. XYZ Business allows ABC Business to use their business center at no charge on Saturdays for the classes. Some classes are taught at public libraries. Tr. pp. 24-25, 28-29, 42-43; Taxpayer’s Ex. Nos. 1 and 6. I conclude that the majority

¹ Although the classes are free, students must bring a laptop to the classes. Taxpayer’s Ex. No. 1.

of ABC Business's funding is from private charity and ABC Business does not provide gain or profit in a private sense to any person connected with it.

I also conclude, based on the testimony and evidence presented, that ABC Business "reduces a burden on government," one of the guidelines from Methodist Old People's Home. The Department's Counsel argued at the evidentiary hearing that although ABC Business is a "wonderful organization," there is no burden on the government "to provide training for the creation of video games." Tr. p. 47. However, according to Jane Doe, the State of Illinois will provide a stipend for unemployed or underemployed people to take certain classes. "Classes include computer science, game design and development, digital media classes, digital media game development and information technology." The State will also pay for training in Microsoft Office, a certificate in computer technology and social media marketing. "ABC Business covers all of these things on this list [including] fundamentals of multi-media graphic design, Internet web." ² "We teach web." "All of these are covered under our umbrella." "These are all the classes the State is willing to pay for." According to her testimony, the State will also pay for "project management." "We teach project management, and our students also learn about online instruction." "Part of their project based learning is creating online instruction that is monitored by us." Tr. pp. 18-22.

Jane Doe teaches the classes for free and she does not seek reimbursement from the government. She argued that she reduces a burden on government because "people who can't afford or are not on unemployment or not recently on unemployment but don't have money can still come and have access to this type of training." Tr. p. 21. Jane Doe also referred to a U.S. Department of Labor website where video game design was considered a career with a "bright outlook." Tr. pp. 18-22. The list of classes that the government will pay for indicates that the

² Jane Doe was apparently reading from a list of classes offered on the Illinois Worknet website.

government assumes a burden of providing a well-trained workforce in the area of computer technology, including video game design. I conclude that ABC Business, by teaching computer technology and video game design classes for free, relieves the government of that burden.³

In Crerar v. Williams, 145 Ill. 625, 643 (1893) the Illinois Supreme Court defined charity “in a legal sense,” as a gift, for the benefit of an indefinite number of persons, either by bringing their hearts under the influence of education ... or “by assisting them to establish themselves for life.” ABC Business benefits an indefinite number of persons by offering them an education in video game design which assists to establish them for life. In Provena Covenant Medical Center v. Department of Revenue, 384 Ill. App. 3d 734, 751 (4th Dist. 2008), aff’d 236 Ill. 2d 368 (2010), the Court stated that for a gift (and therefore charity) to occur, something of value must be given for free. ABC Business’s classes are given for free. The Provena court noted further and one can give a gift to a rich person as well as to a poor person, the object being “the improvement and promotion of the happiness of man.” Congregational Sunday School & Publishing Society v. Board of Review, 290 Ill. 108, 113 (1919). ABC Business’s classes are designed to improve the lives of the people taking them, and in that context, I must conclude that ABC Business is, in fact, a charitable organization.

For the foregoing reasons, it is recommended that ABC Business be granted an exemption identification number.

³ The federal WIOA (“Workforce Innovation and Opportunity Act”) provides activities at the state and local level which are designed to increase the employment, retention and earnings of participants and increase the attainment of recognized postsecondary credentials, and as a result improve the quality of the workforce, reduce welfare dependency and increase economic self-sufficiency. I take administrative notice that the WIOA provides funding in Illinois for eligible individuals to retrain for new occupations. This funding can be used only at approved schools for WIOA certified programs. For example, Joliet Junior College is an approved school offering an eligible program in “Game Design and Development” in which students learn to design games using the newest technology and computer programs. Several other computer technology programs are also eligible. The Illinois Work Net Center Website contains a listing of WIOA approved training programs in Illinois. See the Illinois Work Net Center Website listing of WIOA approved training programs.

Kenneth J. Galvin
Administrative Law Judge

October 14, 2015