

UT 18-04

Tax Type: Use 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 ASSEMBLY FOR AAA

Taxpayer

Docket No. XX-ST-XXX

Claim for Exemption Number

RECOMMENDATION FOR DISPOSITION

Appearances: Robin Gill, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Bonnie Wachter, *pro se*, for ABC ASSEMBLY for AAA

Synopsis:

The ABC ASSEMBLY for AAA (“ASSEMBLY” or “taxpayer”) sent a request 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 request, 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 provides financial support for the activities of a separate organization, the ABC COMMUNITY for AAA ("COMMUNITY for AAA" or "COMMUNITY")¹, as well as scholarships for members of the COMMUNITY. The Department contends that the taxpayer is not organized and operated 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. The taxpayer is an Illinois not-for-profit corporation that was organized on MONTH DATE, YEAR. (Dept. Ex. #1, p. 8)

2. According to the taxpayer's by-laws, its purposes are as follows:

The purposes of the ASSEMBLY are to broaden the financial base for student leadership activities and provide increased opportunities in leadership and career development through BBB and CCC sciences² and related areas. (Dept. Ex. #1, p. 11)

3. The taxpayer provides financial support for the activities of the ABC COMMUNITY of AAA. The taxpayer provides supplemental funds to allow the COMMUNITY to reduce its fees. (Dept. Ex. #1, p. 4; Tr. p. 11)

4. The COMMUNITY of AAA is the career and technical student organization for BBB and CCC science students. (Dept. Ex. #1, p. 6)

5. BBB and CCC sciences include the following areas of study:

- Apparel (Clothing), Merchandising, Textile Design and Manufacturing
- Human Development, Child Care and Child Development
- Consumer and Resource Management
- Family Studies
- BBB and CCC Sciences Teacher Education

¹ The COMMUNITY was formerly known as the ABC GROUP (GROUP). (Dept. Ex. #1, pp. 4, 6, 34-36; <https://www.allacronyms.com/GROUP>)

² BBB and CCC sciences was previously called "DDD." (Tr. p. 14)

- Food Science, Dietetics, Nutrition, Food Production and Hospitality Management
 - Housing and Interior Design (Dept. Ex. #1, p. 40)
6. The national AAA is a student organization that helps young men and women in high school become better leaders in their families, careers and communities. “Members have the opportunity to demonstrate leadership skills through participating in proficiency events, showcasing community service projects, exploring careers, attending educational sessions, and electing officers.” (Dept. Ex. #1, p. 6)
 7. The ABC COMMUNITY’s brochure includes the following: “Preparing Individuals for Life and Work, Strengthening Families, Enabling Communities through BBB and CCC Education and AAA.” (Dept. Ex. #1, p. 44)
 8. The ABC COMMUNITY’s members are high school students who join through the local chapter of their high school. (Dept. Ex. #1, p. 6; Tr. pp. 15-16)
 9. The ABC COMMUNITY of AAA services over 2,700 high school members throughout the state. (Dept. Ex. #1, p. 6)
 10. The COMMUNITY’s members pay a membership fee to the COMMUNITY. The taxpayer does not have members and does not have membership dues. (Tr. pp. 16, 19-20)
 11. The taxpayer is made up of current teachers, retired teachers, alumni, and friends of AAA. (Dept. Ex. #1, p. 6)
 12. For the COMMUNITY, each student member, adviser, and chaperone pays registration fees to attend the COMMUNITY’s meetings and conferences. The

taxpayer's support helps the COMMUNITY cover its expenses. (Dept. Ex. #1, p. 38; Tr. p. 10)

13. The taxpayer gives money to the COMMUNITY to use for the following conferences that are for the COMMUNITY's members: (1) SEASON leadership meetings; (2) MONTH leadership training; (3) State leadership conference; (4) national leadership conference; (5) professional development for prospective and new advisers; (6) summer camp with leadership activities and workshops; and (7) ANNUAL Conference, which is leadership training. (Dept. Ex. #1, pp. 29, 38-39; Tr. p. 13)

14. In addition to supporting the COMMUNITY's leadership activities, the taxpayer provides the following 5 annual scholarships for members of the COMMUNITY:

JANE DOE – for a current student teacher in BBB and CCC sciences; minimum value \$500

MARY ROE – for state officers' expenses to the GGG Meeting; minimum value \$125

JANET SMITH – for a student pursuing a career in the BBB and CCC science field; minimum value \$500

BETTY COOK– for students in occupational/GROUP classes; minimum value \$500

SMYTHE-BROWN – supports state officer at GGG Meeting; minimum value \$500. (Dept. Ex. #1, pp. 40-44; Tr. pp. 13-15)

15. All scholarship applications can be found on the COMMUNITY's website at www.ABCCOMMUNITY.org. When the scholarship committee reviews the applications, the applicants' names are redacted. Sometimes the taxpayer does not receive any applications for a scholarship. (Dept. Ex. #1, p. 40; Tr. pp. 16-17)

16. The taxpayer's total income as reported in MONTH of YEAR was \$XX,XXX of which \$XX,XXX was from donations. The taxpayer's budget is less than \$XX,XXX. (Dept. Ex. #1, p. 7; Tr. p. 8)
17. Approximately 10% of the taxpayer's expenses are for administrative expenses; the remainder of the taxpayer's expenses are all for either the COMMUNITY's activities or the taxpayer's scholarships. (Dept. Ex. #1, pp. 7, 27-28)
18. The taxpayer's Board of Directors receives recommendations from the COMMUNITY's executive director regarding the COMMUNITY's needs with respect to its activities. The taxpayer's Board then prepares a budget to determine how to allocate its income for each need. (Tr. p. 11)
19. All of the taxpayer's Board members and officers are not compensated for their work. They pay for their own travel expenses, including meals and lodging. (Dept. Ex. #1, pp. 4, 6; Tr. p. 9)
20. The taxpayer has no employees, and its assets are only checking and savings accounts. Its purchases are mainly office supplies. (Dept. Ex. #1, pp. 27-28; Tr. p. 10)
21. The taxpayer has no capital, capital stock, or shareholders. (Dept. Ex. #1, p. 8)

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; (4) whether the organization does not provide gain or profit in a private sense to any person connected with it; (5) whether 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; and (6) whether the organization is actually and factually operated

primarily for charitable purposes. 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)).³ 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 Department argues that the taxpayer should not receive an exemption identification number because it does not meet the factors in Methodist Old Peoples Home, supra. The Department contends that the taxpayer's primary function is to serve

³ Because these factors are also used to analyze charitable exemptions from property taxes, cases involving property taxes will also be cited. See Wyndemere, supra.

the needs of the COMMUNITY's members. The Department, therefore, claims that the taxpayer does not benefit an indefinite number of people, does not dispense charity to all who need an apply for it, and places obstacles in the way of those seeking charitable benefits. In response, the taxpayer argues that it is a nonprofit organization that does not receive any fees. The taxpayer also argues that its sole purpose is to support the students of the COMMUNITY.

As the Department has indicated in its arguments, the taxpayer does not meet most of the guidelines for finding that the taxpayer is organized and operated primarily for charitable purposes. The first factor in Methodist Old Peoples Home, *supra*, has not been met because the taxpayer does not primarily benefit an indefinite number of people. The taxpayer primarily provides financial support to the COMMUNITY. The COMMUNITY, therefore, is the taxpayer's primary beneficiary, and the members of the COMMUNITY are the indirect beneficiaries. In Gas Research Institute, *supra*, the court denied a charitable sales tax exemption to the taxpayer on the sole basis that the taxpayer did not directly benefit the general public. The taxpayer in the present case similarly fails to directly benefit the general public and only directly benefits the COMMUNITY.

The Department's regulation provides further guidance regarding this factor and states, in relevant part, as follows:

The Supreme Court has stated that a charitable purpose may refer to almost anything which promotes the well-being of society and which is not forbidden by law; but to qualify as a charity, the purchaser must be organized and operated to benefit an indefinite number of the public. There may be restrictions on the group to be benefited (such as an organization for women, for children, for the aged, etc.), but the service rendered to those eligible for benefits must, nevertheless, in some way relieve the public of a duty which it would have to such beneficiaries or otherwise confer some benefit on the public. 86 Ill. Admin. Code §130.2005(i)(2).

Not only are the taxpayer's direct benefits limited primarily to the COMMUNITY and not the general public, the taxpayer's benefits do not relieve the public of any duty that it would have to the COMMUNITY.

In addition, because the taxpayer primarily provides funding to the COMMUNITY, the taxpayer does not dispense charity to all who need and apply for it. Although the taxpayer offers a few scholarships, the scholarships are not the taxpayer's primary activity, and all of the scholarships are limited to the COMMUNITY's members. The COMMUNITY charges dues for its members. Membership in the COMMUNITY is, therefore, an obstacle in the way of those who need and would avail themselves of the taxpayer's charitable benefits.

Although the COMMUNITY is not the entity seeking the exemption, because the COMMUNITY is the taxpayer's primary beneficiary, it is worth noting that there is no indication that the COMMUNITY would meet the requirements for a charitable organization. As already mentioned, the COMMUNITY is a membership organization that charges dues and registration fees. Charging fees does not automatically disqualify an organization as charitable as long as it furnishes its services to those who are unable to pay. Small v. Pangle, 60 Ill. 2d 510, 515-516 (1975). There is no indication that the COMMUNITY waives its dues or registration fees for those who are unable to pay. It is important to remember that the factors in Methodist Old Peoples Home, *supra*, are to be balanced with an overall focus on whether and how the organization serves the public interest and lessens the State's burden. The taxpayer has not presented evidence showing that it serves the interest of the general public or lessens the burden of the State of Illinois in any way.

Exemption provisions are strictly construed, and all debatable questions must be resolved in favor of taxation. Rogy's New Generation, Inc., *supra*. The evidence presented by the taxpayer does not support a finding that the taxpayer is organized and operated primarily for charitable purposes. Because the taxpayer has failed to clearly and convincingly show that it meets the statutory requirements, the taxpayer is not 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: January 17, 2018