

UT 19-04

TAX TYPE: USE TAX

TAX ISSUE: EXEMPTION FROM TAX (CHARITABLE AND OTHER EXEMPT ENTITIES)

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

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

v.

ABC FRATERNITY

Taxpayer

Docket No. 18-ST-XXX
Letter ID: XXXXXXXXXXXX
Claim for Exemption Number

RECOMMENDATION FOR DISPOSITION

Appearances: Robin Gill, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; JANE DOE, *pro se*, for ABC FRATERNITY

Synopsis:

ABC FRATERNITY (“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. The parties waived their right to an evidentiary hearing and asked that the matter be resolved based on the stipulated facts and the attached exhibits. The Department filed an argument in support of its position. The issue presented is whether the taxpayer is organized and operated exclusively for educational or

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 is an international business fraternity for students of insurance, risk management, and actuarial science. The Department contends that the taxpayer is not organized and operated exclusively for educational or 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 was organized in 1965. (Dept. Ex. #1, p. 2)
2. The taxpayer has chartered XX Chapters across North America and has an annual membership of more than 4,000 students. The taxpayer has an alumni network of over 25,000 people. (Dept. Ex. #1, pp. 2, 6, 12)
3. The taxpayer's letterhead states that it is "the insurance industry's premier collegiate talent pipeline." (Dept. Ex. #1, p. 5)
4. On the taxpayer's application for sales tax exemption, it describes itself as "the only international business fraternity for students of insurance, risk management and actuarial science." (Dept. Ex. #1, p. 2)
5. The taxpayer "pursues a mission to promote and encourage student interest in the industry as a profession while encouraging the high moral and scholastic attainments of its members." (Dept. Ex. #1, p. 2)
6. The taxpayer's articles of incorporation state that "The corporation is organized exclusively for charitable and educational purposes, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under

section 501(c)(3) of the Internal Revenue Code of 1954 (or the corresponding provision of any future United States Internal Revenue Law).”¹ (Dept. Ex. #1, p. 10)

7. The taxpayer’s educational objective is to grow and sustain the insurance industry’s talent pipeline by (1) promoting collegiate interest in insurance careers; (2) appealing to students of all majors; (3) providing educational and professional development resources as well as direct connection to the industry through programming to best prepare students for the workforce; and (4) encouraging effective and innovative recruiting and retention efforts and best practices within the industry. (Dept. Ex. #1, p. 5)
8. The taxpayer’s educational objective includes educating students on hot topics and critical issues such as “Diversity and Inclusion and best practices in recruiting” to “partnerships relating to the rise of insurtech and Distracted Driving.”² (Dept. Ex. #1, p. 5)
9. The taxpayer’s educational programs are available to all students of all majors from colleges and universities. (Dept. Ex. #1, p. 5)
10. The taxpayer’s educational curriculum includes conferences, career fairs, professional development opportunities, career planning and preparation tools, webinars, scholarships, internships, and a network with the industry and fellow chapters throughout North America. (Dept. Ex. #1, p. 5)
11. The taxpayer offers benefits and programs to college students such as the following:

¹ This quotation was included on one of the documents submitted by the parties, but the actual articles of incorporation were not provided.

² An internet search of the word “insurtech” revealed the following: “In an over-simplified world, many see InsurTech as being the technology behind insurance. In the real world, however, InsurTech is a term applied to the many segments of new technology that are disrupting the insurance space: smartphone apps, consumer activity wearables, claim acceleration tools, individual consumer risk development systems, online policy handling, automated compliance processing, and more.” <https://www.vertafore.com/resources/blog-posts/what-insurtech-and-how-can-you-harness-its-disruptive-powers>

- Scholarship Listing where students can find a current listing of scholarships and information on how to apply;
- Career Information where students can find information about certain careers in the industry;
- Career Resources where students can receive help on resume writing, career coaching, or reference checking;
- Career Center where students can search and apply for entry level jobs or internships;
- Webinars where students can learn about the insurance industry, and the companies and organizations within it;
- Annual International Conference where students can participate in the taxpayer's largest Career Fair, Leadership Seminars, Professional Development Workshops, and more. Historically, students who are not members, from schools where the taxpayer does not have a chapter, have been allowed to attend upon their request;
- XXXXXXXXXXXXXX, a key feature of One Campus at A Time—the taxpayer's initiative to activate the industry to reach out to and engage all students at any school, further promoting the many career opportunities and paths in insurance;
- The XXXXXX, a free Virtual Career Fair, open to all students, of all majors, from any school, regardless of their affiliation with the taxpayer, the purpose being to encourage anyone to experience the opportunities within the industry. (Dept. Ex. #1, pp. 6-7)

12. There are no restrictions to the benefits that the taxpayer offers online, such as Scholarship Listing, Career Information, Career Resources, Career Center, and Webinars.

The education programs are not limited to students or members. (Dept. Ex. #1, p. 8)

13. The taxpayer's chapters impact high school students through a program called InVEST, which is a national program that promotes insurance education and careers to high school students. (Dept. Ex. #1, p. 7)

14. The taxpayer recently sponsored High School Actuarial Day at ABC UNIVERSITY where more than 300 high school students and teachers received free information,

programming, and networking opportunities surrounding the actuarial profession. (Dept. Ex. #1, p. 7)

15. The taxpayer's chapter at XYZ UNIVERSITY is involved in the Risk Management Technician Pathway program which provides insurance classes to local high school students in the STATE OF XYZ area. (Dept. Ex. #1, p. 7)
16. The taxpayer's alumni have access to the Career Center where they can post, search, and apply for entry-level positions. Alumni also receive free access to a network of industry professionals through the Alumni Council, which is a program that fosters relationships within the industry and beyond and provides community service, mentoring, and networking opportunities at no cost. (Dept. Ex. #1, p. 7)
17. The Alumni Council is open to everyone, at no cost, regardless of their affiliation with the taxpayer. There are no limits or restrictions on joining the Alumni Council. (Dept. Ex. #1, p. 7)
18. Industry representatives from any company or organization are eligible for the taxpayer's services such as the Career Fairs. Industry professionals participate as speakers and panelists at the taxpayer's conferences and webinars. (Dept. Ex. #1, pp. 7-8)
19. The taxpayer charges a one-time \$50 fee to individual student members. The taxpayer also charges a one-time \$2,500 chartering fee for colleges and universities when they charter a new chapter. The taxpayer charges a "nominal" sliding scale fee to attend the Annual Conference based on the number of students attending from a specific school.³ (Dept. Ex. #1, p. 8)
20. The Leadership Symposium and Virtual Career Fair as well as all webinars and online resources are provided at no charge to students. For the industry, the taxpayer offers "a

³ The actual sliding scale fees were not provided.

variety of participation/sponsorship levels” for the Annual, Regional, and Virtual conferences and career fairs. For the industry, the taxpayer also offers “Sustaining Partner options” based on preferences and needs for engagement and visibility with the taxpayer and its student members.⁴ (Dept. Ex. #1, p. 8)

21. In the past, the taxpayer has waived the fee for the chapter at ABCD STATE UNIVERSITY due to financial hardship with membership dues. The taxpayer has considered requests for assistance with or reduction to the student cost of the Annual Conference. The taxpayer does not have a formal policy for waiving fees; the taxpayer considers the requests on a case-by-case basis. (Dept. Ex. #1, p. 9)

22. The income from the taxpayer’s 2017 Profit & Loss statement shows the following:

Corporate Contributions	555,700.00
Grants	25,000.00
Individual, Business Contributions	23,190.30
United Way, CFC Contributions	65.13
Interest-savings	20.62
Inventory sales	2,700.50
Miscellaneous	3,066.13
Membership dues	103,150.00
Chapter Chartering	10,000.00
Annual Conference	32,200.00
Leadership Conference	<u>17,789.48</u>
Total Income	772,882.16 (Dept. Ex. #1, p. 11)

23. The taxpayer is exempt from federal income taxes under section 501(c)(3) of the Internal Revenue Code pursuant to a determination made by the IRS. (Dept. Ex. #1, pp. 19-20)

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.

⁴ The actual fees for the industry were not provided.

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 or educational 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). 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. Du Page County Board of Review v. Joint Commission on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461, 466 (2nd Dist. 1995).

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 Retirement Community v. Department of Revenue, 274 Ill. App. 3d 455, 459 (2nd Dist. 1995); 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.*

Educational Exemption

In order to determine whether the taxpayer is organized and operated exclusively for educational purposes, section 2c of the Act provides, in part, as follows:

For purposes of this Act, a corporation, limited liability company, society, association, foundation or institution organized and operated exclusively for educational purposes shall include: all tax-supported public schools; private schools which offer systematic instruction in useful branches of learning by methods common to public schools and which compare favorably in their scope and intensity with the course of study presented in tax-supported schools; 35 ILCS 105/2c.

The phrase “educational purposes” is construed as meaning “school purposes” as that phrase has been interpreted by the Supreme Court. 86 Ill. Admin. Code §130.2005(1); Rogy’s New Generation, Inc., at 772. According to the Supreme Court, in order for an institution to operate for school purposes, its course of study must: (1) fit into the general scheme of education founded by the State and supported by public taxation, and (2) substantially lessen what would otherwise be a governmental function and obligation. Coyne Electrical School v. Paschen, 12 Ill. 2d 387, 392-93 (1957).⁵

The taxpayer argues that it offers a course of study that fits into the general scheme of education founded by the State and supported by public taxation because 72% of its chapters are housed within tax-supported schools. One chapter is at ANYWHERE STATE UNIVERSITY, and the ANYWHERE UNIVERSITY AT METROPOLIS is seeking to charter a chapter. The taxpayer believes that its educational programming compares favorably with courses of study at those schools, and the schools actively encourage their students to become members of the

⁵ Because these factors are also used to analyze educational exemptions from property taxes, cases involving property taxes will also be cited. See Rogy’s New Generation, *supra*.

taxpayer's organization "in order to support, complement, and bolster the educational content being provided." (Dept. Ex. #1, p. 16) The taxpayer contends that its educational programming uses content from the same organizations that provide textbooks for tax-supported schools. According to the taxpayer, its conferences, educational sessions, webinars, leadership programs, and professional development provide students with comprehensive education about the insurance industry. The taxpayer believes that schools rely on the taxpayer's network to maximize industry education, exposure, and opportunities.

The taxpayer also argues that it offers a course of study that substantially lessens what would otherwise be a governmental function and obligation because tax-supported schools commonly have Career Services departments that have an obligation to support students. The taxpayer, therefore, believes that the government has an obligation to provide services to connect students with various industries and job opportunities. In the taxpayer's view, the taxpayer's educational programs accomplish this and enhance the services that the government otherwise provides and has the obligation to provide to students. The taxpayer believes that it directly lessens the burden that the government would otherwise have to provide.

The taxpayer's arguments are not persuasive, and the taxpayer does not qualify for the educational purposes exemption. It must first be noted that even though the taxpayer described itself in its application as an "international business fraternity," the taxpayer has argued that it is not a "fraternal organization" because it is tax exempt for "educational purposes" under section 501(c)(3) rather than as a "fraternity" or "fraternal organization" under sections 501(c)(7) or 501(c)(8) of the Internal Revenue Code. This federal income tax exemption designation, however, is not determinative of whether the taxpayer is entitled to an exemption for state tax purposes. See People ex rel. County Collector v. Hopedale Medical Foundation, 46 Ill. 2d 450,

464 (1970). The actual activities of the organization must be considered. Du Page County Board of Review, *supra*.

The taxpayer does not meet the standards set forth in Coyne, *supra*., because it does not offer a course of study that fits into the general scheme of education founded by the State and supported by public taxation. As indicated in the taxpayer's arguments, the taxpayer's educational programs may "support, complement, and bolster" the educational content that is provided at the traditional schools, but the taxpayer does not offer a course of study similar to that of traditional schools. The taxpayer offers "conferences, educational sessions, webinars, leadership programs, and professional development." There is no indication that these educational programs are similar in length to classes offered at traditional schools, and there is no indication that grades are given or degrees are offered. See Winona School of Professional Photography v. Department of Revenue, 211 Ill. App. 3d 565 (1st Dist. 1991) (exemption denied because, *inter alia*, degrees were not awarded and courses were too short); Chicago and Northeast Illinois District Council of Carpenters Apprentice and Trainee Program v. Department of Revenue, 293 Ill. App. 3d 600 (1st Dist. 1997) (exemption denied because, *inter alia*, degree or diploma was not awarded). The taxpayer is "the insurance industry's premier collegiate talent pipeline," and its educational objective is to grow and sustain the insurance industry's talent pipeline. The programs offered are typical of a business fraternity rather than a school. The taxpayer is an organization that offers educational courses while promoting the insurance industry, but its courses do not fit into the general scheme of education founded by the State.

When the court in Coyne, *supra*, established the two-part test, the court noted that in People ex rel. Brenza v. Turnverein Lincoln, 8 Ill. 2d 198 (1956) a tax exemption was denied to an institution that conducted swimming and gymnastics classes even though those classes were

educational in a broad sense and were part of the curriculum in ordinary schools. The Coyne court then stated as follows:

In that case we further restricted the constitutional meaning of the word ‘school’ by adopting the view that constitutional tax exemption for private educational institutions was intended to extend only to those private educational institutions which provide at least some substantial part of the educational training which would be otherwise furnished by various publicly supported schools, and thereby lessen the tax burden imposed upon our citizens as the result of our public educational system. Coyne, at 392.

The taxpayer in the present case may offer short courses that are similar in part to those offered in schools, but the taxpayer does not provide a substantial part of the educational training that would otherwise be furnished by publicly supported schools thereby lessening the tax burden imposed upon our citizens. The government does not have an obligation to provide a Career Services department, as the taxpayer contends, and it does not have an obligation to connect students with industries or job opportunities. The taxpayer’s educational activities do not fit into the general scheme of education founded by the State and supported by public taxation. The educational exemption must, therefore, be denied.

Charitable Exemption

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, at 459 (citing Methodist Old Peoples Home v. Korzen, 39 Ill. 2d 139, 156-57 (1968)).⁶ 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, at 466.

The taxpayer argues that “due to the wide variety, quantity, and quality of the services that [the taxpayer] provides, virtually anyone and everyone has access to the benefits of the organization.” (Dept. Ex. #1, p. 8) The taxpayer claims that there are no restrictions to the benefits that the taxpayer offers online, such as Scholarship Listing, Career Information, Career Resources, Career Center, and Webinars. The taxpayer also contends that its education programs are not limited to students or members.

The evidence presented by the taxpayer does not show clearly and convincingly that it is organized and operated exclusively for charitable purposes under the guidelines of Methodist Old Peoples Home, *supra*. The first guideline has not been met because the taxpayer's primary purpose is to benefit the insurance industry. 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 that case had a stated purpose of “funding, encouraging and conducting research and development of natural gas resources and uses.” *Id.* at 432. The taxpayer was organized by members of the natural gas industry and was overseen and operated by members of the industry. The court found that its primary purpose was to enhance

⁶ 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 position of natural gas in the energy marketplace, and any indirect benefit to the general public was essentially incidental. Gas Research Institute, at 436-437. In the present case, the taxpayer's primary purpose is to promote the insurance industry among college students, and any benefit to the general public is incidental.

The taxpayer also does not meet most of the other guidelines. The majority of the taxpayer's income is from "Corporate Contributions," but it is not clear whether these are contributions for which the corporation receives nothing in return. The taxpayer's organization is similar to organizations referred to in the following section of the Department's regulation concerning charitable organizations:

"Nonprofit Bar Associations, Medical Associations, Lions Clubs, Rotary Clubs, Chambers of Commerce and other professional, trade or business associations and labor unions, which draw their funds largely from their own members, and as to which an important purpose is to protect and advance the interests of their members in the business world, are not organized and operated exclusively for charitable or educational purposes, even though such organizations may engage in some charitable and educational work. The same conclusion applies to the American Legion, Veterans of Foreign Wars, Amvets, the Daughters of the American Revolution and other similar nonprofit patriotic organizations." 86 Ill. Admin. Code §130.2005(g).

The taxpayer is a self-described international business fraternity that draws its funds mainly from members of the insurance industry and its own student members. An important purpose of the organization is to advance the interests of its members in the insurance industry. This is not the type of organization that generally qualifies for the exemption.

With respect to whether the taxpayer gives charity to all who need and apply for it, the taxpayer charges a \$50 student membership fee, a one-time \$2,500 chartering fee for schools when they charter a new chapter, and a "nominal" sliding scale fee to attend the Annual Conference. The amount of the sliding scale fee was not provided. The charging of 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). The taxpayer has not shown clearly and convincingly that it does so. In the past, the taxpayer has waived the fee for the chapter at one school due to financial hardship, but there is no indication that it has waived other fees. The taxpayer indicated that it has considered requests for reduction to the student cost of the Annual Conference, but the evidence does not show that waivers were given. In addition, even though the taxpayer admitted that it does not have a formal policy for waiving fees and the taxpayer considers the requests on a case-by-case basis, failing to have a fee waiver or charitable policy is another factor against finding that the taxpayer is a charitable organization.⁷

In order to receive the exemption, the taxpayer must establish clearly and convincingly that it is organized and operated exclusively for charitable or educational purposes. As previously mentioned, exemption provisions are strictly construed, and all doubts must be resolved in favor of taxation. Rogy's New Generation, *supra*; Wyndemere, *supra*; Gas Research Institute, *supra*. Because the evidence presented falls short of showing clearly and convincingly that the taxpayer has met its burden of proof, the exemption must be denied.

Recommendation:

For the foregoing reasons, it is recommended that the taxpayer's request for an exemption identification number be denied.

⁷ With respect to whether the organization provides gain or profit in a private sense to any person connected with it, the record does not include any evidence concerning whether the salaries paid to employees were reasonable. The record only includes an expense of \$277,289.42 for Officer Salaries on the taxpayer's 2017 Profit & Loss statement. Without information concerning how many people were covered by this expense and whether the amounts were reasonable, it must be found that the taxpayer has not met this guideline. See Arts Club of Chicago v. Department of Revenue, 334 Ill. App. 3d 235, 246 (1st Dist. 2002) (absence of evidence regarding reasonable salaries weighs in Department's favor because taxpayer has burden of proof).

Enter: May 2, 2019

Linda Olivero
Administrative Law Judge