

ST 07-15

Tax Type: Sales 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
OF THE STATE OF ILLINOIS,**

v.

**ABC EMPLOYEE GROUP, LLC,

Applicant**

Docket No: 00 ST 0000

Use Tax Exemption

**Kenneth J. Galvin
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Mr. Brian L. Browdy, Horwood, Marcus & Berk, Chtd., on behalf of ABC Employee Group, LLC; Mr. John Alshuler, Special Assistant Attorney General, on behalf of the Department of Revenue of the State of Illinois.

SYNOPSIS: This matter comes on for hearing pursuant to the protest and request for hearing filed by ABC Employee Group, LLC (hereinafter “ABC Employee Group” or “applicant”) following the second denial by the Illinois Department of Revenue (hereinafter “Department”) of its request for an exemption from the collection of use tax on purchases of tangible personal property. ABC Employee Group claims that it is entitled to this exemption because it is organized and operated exclusively for educational purposes. A hearing in this matter was held on April 7, 2007 with testimony from Jim

Doe, Vice-President, Jane Doe, Director of Regulatory Review, and John Doe, Senior Director of Financial Reporting. Following a careful review of the evidence and testimony presented at the hearing, and after consideration of the “Post-Hearing Brief of Taxpayer,” Department’s “Response Brief,” and Taxpayer’s “Reply,” I recommend that the Department’s denial be affirmed.

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 second denial of exemption dated July 14, 2006. Tr. pp. 10-11; Dept. Ex. No. 1.
2. ABC Employee Group, LLC, is a single member limited liability company whose sole member is XYZ Corporation-New York. Joint Stipulation No. 1.
3. XYZ Corporation-New York is a wholly-owned subsidiary of ABC Holdings, Inc., which is, itself, a wholly-owned subsidiary of MMM Corporation. Joint Stipulation No. 2.
4. Through its subsidiaries, MMM Corporation provides private, nationally accredited, postsecondary education at more than 80 institutions throughout the United States. Joint Stipulation No. 3.
5. MMM Corporation has five wholly-owned subsidiaries operating in Illinois: University Online; The Institute of Anywhere; College of Design; International Academy; and College. Joint Stipulation No. 4.
6. The Department issued a use tax exemption certificate to each of MMM Corporation’s five-wholly owned subsidiaries operating in Illinois. Joint Stipulation No. 5; Exhibit D.

7. MMM Corporation provided management and administrative services, at a fee, to its wholly owned subsidiaries. Services provided include the following: management advice; information technology (maintenance of the computer mainframe, infrastructure, software and upgrades for the schools for processing attendance records, grades, student communication and billing); accounting, tax and financial management; legal assistance; regulatory affairs (accreditation, degree granting authority, Title IV funds availability, new program or class approvals); marketing and advertising; career services (including on-line job fairs); academic and student services (course and curriculum development, student record keeping, retention, faculty development, compliance with accreditation requirements); human resources; student accounts (financial aid, financial aid alternatives, loans, collections). Tr. pp. 14-16, 18-22; App. Ex. No. 1.
8. MMM Corporation had a “Services Agreement” with the following wholly owned subsidiaries:. Tr. pp. 14-16; App. Ex. No. 1.
9. The Services Agreements were assigned by MMM Corporation to the applicant, ABC Employee Group, on April 2, 2007, under an “Assignment and Assumption Agreement,” with applicant/assignee agreeing to assume all liabilities of the assignor and to “observe, perform and fulfill the terms and conditions to be observed, performed and fulfilled by the Assignor under the Assigned Contracts after the date hereof.” Tr. pp. 16-17; App. Ex. No. 2.
10. The “Limited Liability Company Agreement of ABC Employee Group, LLC” states that its purpose “shall be to engage in the business of providing management consulting, management services, support services and other

services to corporations, limited liability companies and other organizations ... and to engage in any other lawful act or activity for which limited liability companies may be organized under the law of the State of Delaware.” Joint Stipulation; Exhibit C.

CONCLUSIONS OF LAW:

An examination of the record establishes that ABC Employee Group has not demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant an exemption from use tax. Accordingly, under the reasoning given below, the determination by the Department denying ABC Employee Group a use tax exemption number should be affirmed. In support thereof, I make the following conclusions.

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 of the Act provides a list of tangible personal property that is free from imposition of the 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.” 35 ILCS 105/3-5(4). Section 2-5(11) of the Retailers’ Occupation Tax Act (“ROTA”) contains a similar provision. 35 ILCS 120/2-5(11).

The Department’s denial of the taxpayer’s claim for an exemption identification number is presumed to be correct, and the taxpayer has the burden of clearly and conclusively proving that it is entitled to the exemption. Wyndemere Retirement Community v. Department of Revenue, 274 Ill. App. 3d 455 (2nd Dist 1995). To prove

its case, a taxpayer must present more than its testimony denying the Department's determination. The taxpayer must present sufficient documentary evidence to support its claim. Sprague v. Johnson, 195 Ill. App. 3d 798 (4th Dist. 1990). 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 exemption "resolved in favor of taxation." Van's Material Co. Inc. v. Department of Revenue, 131 Ill. 2d 196 (1989). In the instant case, ABC Employee Group has not proven, clearly and conclusively, that it is entitled to a use tax exemption number.

ABC Employee Group seeks to qualify for an exemption identification number as a "corporation, society, association, foundation or institution organized and operated exclusively for educational purposes." "A limited liability company may qualify for the exemption under the statute only if the limited liability company is organized and operated exclusively for educational purposes." 35 ILCS 105/3-5(4); 35 ILCS 120/2-5(11). ABC Employee Group is a single member limited liability company whose sole member is XYZ Corporation-New York. Joint Stipulation No. 1; Exhibit C. The issue before this tribunal is whether ABC Employee Group is organized and operated exclusively for educational purposes.

Pursuant to its authority under Section 12 of ROTA (35 ILCS 120/12), the Department of Revenue promulgated 86 Ill. Admin. Code § 130.2005. This regulation acknowledges that there is no specific exemption in the Illinois Constitution for "educational purposes" as to any kind of tax, but Section 6, Article IX of the Constitution authorizes the General Assembly to grant a property tax exemption for property that is used for "school purposes." "Consequently the Department will construe the Retailers' Occupation Tax exemption for 'educational purposes' as meaning for 'school purposes,'

as the phrase ‘school purposes’ has been interpreted or may be interpreted by the Supreme Court.” 86 Ill. Admin. Code § 130.2005 (1)(1).

The regulation also acknowledges that the ‘educational purposes’ exemption is not limited by statute to nonprofit institutions. 86 Ill. Admin Code § 130.2005 (1)(5). It is unclear from this statement, however, whether both for-profit schools and for-profit organizations such as ABC Employee Group are entitled to exemptions from use tax on purchases of tangible personal property.¹ In Swank v. Department of Revenue, 336 Ill. App. 3d 851 (2nd Dist. 2003), the court was asked to determine whether properties “used with a view to profit,” even if used for educational purposes, are entitled to tax exemption under section 200/15-35(b) and (c) of the Property Tax Code. The Department’s position in Swank was that any property used with a view to profit, even if used for educational purposes, was excluded from the section 15-35 tax exemption. *Id.* at 857. The court held that section 15-35 excludes from tax exemption, property held for profit, even if used for school purposes. The court stated explicitly that it declined “to extend tax exemption under section 15-35 to properties held for profit, even if they are used for educational purposes.” *Id.* at 863. “In [Swank], plaintiffs are ... the sole shareholders of for-profit corporations that provide educational services. Thus, plaintiffs are using their property with a ‘view to profit’ which prevents exemption under section 15-35.” *Id.* at 859. Similarly, the shareholders of MMM Corporation and ABC Employee Group are shareholders of for-profit corporations that may provide educational services, but are clearly operated and organized with “a view to profit.”

¹ No financial statements were admitted for ABC Employee Group. MMM Corporation’s Annual Report contains a Consolidated Statement of Income which shows “Total Revenue” of \$2,034 billion for 2005 and \$1,728 billion for 2004. “Net Income” was \$233 million for 2005 and \$179 million for 2004. The “Letter to our Shareholders” contained in the Annual Report states that “... we continue to achieve exceptional business results. During 2005, we set new records and expanded our business in several key areas.” Joint Stipulation Ex. F.

86 Ill. Admin. Code § 130.2005 also acknowledges that for property tax purposes, the Supreme Court has held that an association, which is not, itself, a school in the ordinary sense, but which provides a substantial service in improving the educational standards of schools (such as the Association of American Medical Colleges), is within the ‘school purposes’ exemption, so that the Department will consider such an organization to be organized and operated exclusively for ‘educational purposes’ for Retailers’ Occupation Tax purposes. 86 Ill. Admin. Code § 130.2005 (1)(6).

In Association of American Medical Colleges v. Lorenz, 17 Ill. 2d 125 (1959), the Illinois Supreme Court considered the issue of whether real estate owned by the Association of American Medical Colleges, a not-for-profit corporation, and used by the corporation to improve U.S. medical education, was exempt from taxation as property “used for public school, college, seminary, university, or other public educational purposes.” The Association of American Medical Schools published a journal and directory showing admission requirements and other information about medical schools, compiled student information designed to assist medical schools in developing programs of instruction, sponsored admission tests and teaching institutes, evaluated students’ intellectual and personality characteristics and their relationship to scholastic and professional performance, maintained a library of motion picture films for use by medical schools, performed placement functions and appraised the curricula of medical schools. “Through its inspection and liaison committee, the Association joins in the accrediting of all medical schools in the United States.” *Id.* at 127.

In Association of American Medical Schools, the taxing authority argued that the property was not exempt because the Association was not itself a “school.” The Court rejected this argument stating that there was “no merit” to the taxing authority’s position

that only schools were entitled to the exemption. “The taxable status of property is not determined solely or necessarily by whether the owner or operator is a school.” *Id.* at 127. The Court found that the functions to which the Association’s property were devoted are identical to those which would afford exemption if conducted separately by the member institutions. “Where the functions themselves qualify for exemption, it does not matter that they are performed by a separate organization rather than by the respective member institutions.” “It is not the policy of the law to penalize efficiency or to favor duplications of effort.” *Id.* at 129.

ABC Employee Group argues in its Post Hearing Brief that the applicant provides a substantial service in improving educational and learning standards for its member schools and therefore qualifies for the “educational purposes” exemption, regardless of the fact that the applicant does not provide classroom instruction or qualify as a “school” in the ordinary sense. The Department argues, on the other hand, that the holding of Association of American Medical Schools applies only to not-for-profit institutions, that ABC Employee Group does not perform any service for its corporate affiliates that equates to those performed by the Association of American Medical Schools, and that the services it does perform are only for its for-profit affiliated schools, in contrast to the Association of American Medical Schools which participated in the accrediting of all medical schools in the United States.

The specific issues raised by Association of American Medical Schools do not need to be addressed by this tribunal because ABC Employee Group was unable to prove by clear and convincing evidence the threshold issue, *i.e.*, that it is an institution “organized and operated exclusively for educational purposes” as required for exemption under 35 ILCS 105/3-5(4).

Whether an institution has been organized and is operating for an exempt purpose is to be determined from its charter and bylaws and actual facts relating to its method of operation. DuPage County Bd. of Review v. Joint Com'n on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461 (2nd Dist. 1995). ABC Employee Group was formed on July 2, 1999. The Limited Liability Company Agreement of ABC Employee Group (the "Agreement") states that its purpose "shall be to engage in the business of providing management consulting, management services, support services and other services to corporations, limited liability companies and other organizations ... and to engage in any other lawful act or activity for which limited liability companies may be organized under the law of the State of Delaware." Joint Stipulation Ex. C.

It must be strongly noted here that according to the "purpose" as stated in the Agreement, ABC Employee Group is not limited to performing consultant, management, support and other services for schools or educational institutions. The word "school" or the phrase "educational institution" is not mentioned in ABC Employee Group's purpose. There is no restriction in the "purpose" clause that would require ABC Employee Group to provide its services to schools and educational institutions only.

According to the Agreement, ABC Employee Group is free to "engage in the business" of providing its services to any corporation, limited liability company or other organization that hires it. According to its purpose, ABC Employee Group could be engaged in the business of providing management consulting services to Burger King, should the opportunity arise. No financial statements were admitted for ABC Employee Group so I am unable to determine from where their revenue or income is derived.

With a "purpose" as broad as the one stated in the Agreement, it is not conceivable to conclude that ABC Employee Group is organized and operated

“exclusively” for educational purposes, as is required by the statute. “Exclusively” as used in the statute refers to the primary purpose of the organization, not any secondary or incidental purpose. Evangelical Hospital Association v. Novak, 125 Ill. App. 3d 439 (2nd Dist. 1984). It is logical to conclude that the primary purpose of a for-profit organization, such as ABC Employee Group, is to make a profit. In the instant case, no evidence was presented to the contrary. ABC Employee Group is a for-profit institution, organized and operated to “engage” in the “business” of providing its services to any corporation, limited liability corporation or organization that hires it. Moreover, at the risk of oversimplifying the argument here, it is impossible to conclude that a business is organized and operated “exclusively” for educational or school purposes when the words “education” or “school” do not appear in its statement of purpose as contained in its charter.

In a narrative sent to the Department with the application for exemption, MMM Corporation, ABC Employee Group’s parent, stated that it decided “for the following business reasons” to establish ABC Employee Group to centralize the operations, management, and administration of its schools: 1) to obtain economics-of-scale discounts when contracting with vendors ... ; 2) to standardize policies and procedures across its schools when addressing issues such as regulatory compliance, financial aid sources, and educational philosophies; 3) to realize cost efficiencies in creating one administration for serving all its schools ... ; and 4) to allow the schools themselves to focus solely on issues relating to educating their students while contracting out to an affiliate other functions critical for their operations. Tr. pp. 28-34; Dept. Ex. Nos. 2 and 3. It again must be strongly noted that MMM Corporation did not establish ABC Employee Group for “educational” or “school” purposes. ABC Employee Group was established,

according to its parent, for “business reasons,” to obtain discounts, to realize cost efficiencies.

I am forced to conclude, based on ABC Employee Group’s “purpose” as stated in its charter and the narrative sent to the Department by its parent, that ABC Employee Group is organized and operated for business purposes. ABC Employee Group is a for-profit organization and its purpose is to “engage” in business and it was established for “business reasons.” In the context of engaging in its business and earning a profit, ABC Employee Group may assist a MMM Corporation affiliated school obtain cost efficiencies and discounts. But this service is incidental and secondary to ABC Employee Group’s “purpose” of engaging in business and earning a profit. Engaging in business, obtaining discounts and realizing cost efficiencies are not endeavors ever recognized by Illinois courts as “educational” and the evidence in this case forces me to conclude that ABC Employee Group is not organized and operated exclusively for educational or school purposes, as is required by the statute.

There was testimony at the evidentiary hearing that ABC Employee Group only provides its services to schools affiliated with MMM Corporation. Tr. p. 22. This statement could not be verified by any documentary evidence admitted at the hearing. No financial information was admitted into evidence for ABC Employee Group. In fact, it again must be noted that ABC Employee Group is not required by its purpose to provide its services only to affiliated schools. ABC Employee Group is permitted, according to its purpose, to engage in business with any corporation, limited liability corporation or organization that hires it. If this tribunal were to give ABC Employee Group the use tax exemption it requests, it is conceivable, under the terms of the purpose as contained in its

Agreement, that the organization would never provide its services exclusively to a school or an educational institution.

Moreover, the apparent basis for ABC Employee Group's argument that it provides its services only to affiliated companies would appear to be the five "Services Agreements" assigned to ABC Employee Group by MMM Corporation. MMM Corporation had a Services Agreement with the following wholly-owned subsidiaries: Tr. pp. 14-16; App. Ex. No. 1. The Services Agreements required MMM Corporation to provide management and administrative services, at a fee, to the five wholly owned subsidiaries. Services provided included the following: management advice; information technology (maintenance of the computer mainframe, infrastructure, software and upgrades for the schools for the processing of attendance records, grades, student communication and billing); accounting, tax and financial management; legal assistance; regulatory affairs (accreditation, degree granting authority, Title IV funds availability, new program or class approvals); marketing and advertising; career services (including on-line job fairs); academic and student services (course and curriculum development, student record keeping, retention, faculty development, compliance with accreditation requirements); human resources; student accounts (financial aid, financial alternatives, loans, collections). Tr. pp. 14-16, 18-22 ; App. Ex. No. 1.

The Services Agreements were assigned by MMM Corporation to ABC Employee Group on April 2, 2007, under an "Assignment and Assumption Agreement," with assignee, ABC Employee Group, agreeing to assume all liabilities of the assignor and to observe, perform and fulfill the terms and conditions of the agreements.² Tr. pp.

² The "Assignment and Assumption Agreement" is signed by XXXX as "Executive Vice President and Chief Financial Officer" of MMM Corporation and also by XXXX as "Vice President, Chief Financial Officer and Treasurer" of ABC Employee Group, LLC. XXXXXh did not testify at the evidentiary hearing.

16-17; App. Ex. No. 2. I note that these Services Agreements were assigned by MMM Corporation to ABC Employee Group on April 2, 2007, two days before the scheduled evidentiary hearing held on April 4, 2007.³ The Services Agreements were obviously assigned to ABC Employee Group in anticipation of the evidentiary hearing. The assignment of the Services Agreements two days before the evidentiary hearing negatively impacts on the credibility of ABC Employee Group's argument that it is organized and operated "exclusively" for educational purposes. The Services Agreements had not been assigned when the applicant made its first or second request for a sales tax exemption number nor had the Services Agreements been assigned

when the applicant received its second denial of sales tax exemption on July 14, 2006. Dept. Ex. No. 1.

Further, if these Services Agreements and the "Assignment and Assumption Agreement" were offered into evidence to show that ABC Employee Group is organized and operated exclusively for educational purposes, then, at best, the Agreements show this only for the two days before the hearing. ABC Employee Group has been in existence for approximately seven and one-half years prior to the assignment of the Services Agreements. There was no documentary evidence presented at the hearing as to what "business" ABC Employee Group "engaged" in since its formation on July 1, 1999 and prior to the assignment of the Services Agreements, two days before the hearing. The only evidence in the record of ABC Employee Group's activities prior to the assignment of the Services Agreements is that it operated as a for-profit institution,

³ The "Assignment and Assumption Agreement" was admitted without objection by the Department. Mr. Jim Doe, applicant's vice-president, testified that this Agreement was "maintained in the ordinary course of business" which would apparently constitute the one day before the evidentiary hearing. Tr. p. 17.

organized and operated to “engage” in the “business” of providing its services to any corporation, limited liability corporation or organization that hired it. There is no evidence in the record that ABC Employee Group had any association with educational institutions or schools prior to the assignment of the Services Agreements. In this matter, ABC Employee Group has the burden of clearly and conclusively proving that it is entitled to the exemption it is seeking. Wyndemere Retirement Community v. Department of Revenue, 274 Ill. App. 3d 455 (2nd Dist 1995). The evidence of record falls far short of proving, clearly and convincingly, that ABC Employee Group is organized and operated exclusively for educational purposes.

MMM Corporation has a complicated organizational structure which was never satisfactorily explained at the hearing or in the post-hearing briefs. ABC Employee Group, LLC, is a single member limited liability company whose sole member is XYZ Corporation-New York. Joint Stipulation No. 1. XYZ Corporation-New York is a wholly-owned subsidiary of ABC Holdings, Inc., which is itself a wholly-owned subsidiary of MMM Corporation. Joint Stipulation No. 2. MMM Corporation’s “Form 10-K” for the period December 31, 2005 (filed March 6, 2006) lists 49 MMM Corporation subsidiaries, including ABC Employee Group, LLC.⁴ Joint Stipulation; Exhibit E-21.

MMM Corporation has five wholly-owned subsidiaries operating in Illinois. Joint Stipulation No. 4. The Department issued a use tax exemption certificate to each of MMM Corporation’s five-wholly owned subsidiaries operating in Illinois. Joint

⁴ The Joint Stipulation states that “[T]hrough its subsidiaries, MMM Corporation provides private, nationally accredited, post-secondary education at more than 80 institutions throughout the United States. Joint Stipulation No. 3. It was never addressed at the evidentiary hearing why the 10-K only lists 50 subsidiaries.

Stipulation No. 5; Exhibit D. Although the Services Agreements of these five institutions were assigned to ABC Employee Group two days before the evidentiary hearing, the five subsidiaries are, according to the stipulation, still subsidiaries of MMM Corporation. MMM Corporation is not the applicant in this case. In effect, ABC Employee Group is applying for a use tax exemption for two days of work supposedly done for five MMM Corporation subsidiaries that have already received a use tax exemption.

Ms. Jane Doe, Director of Regulatory Review, testified that she is employed by MMM Corporation but that her “legal employer” is ABC Employee Group. Tr. pp. 35-36. No further explanation was offered for this statement. She testified extensively about the regulatory components of private postsecondary schools. During Ms. Jane Doe’s testimony, counsel for the applicant caused to be admitted into evidence a document dated March 15, 2007, entitled “An Overview of the Regulatory Triad,” written by Ms. Jane Doe. Tr. p. 37. The bottom of each of the 14 pages of the document is imprinted with the notation “2007 MMM Corporation.” App. Ex. No. 4.

There is no way for me to attribute the services described in this document to ABC Employee Group, the applicant in this case. First, it is unclear from Ms. Jane Doe’s testimony whether her employer was/is MMM Corporation or ABC Employee Group. Second, the document is dated before the Services Agreements were assigned from MMM Corporation to ABC Employee Group. Third, the document is printed on MMM Corporation stationary. MMM Corporation is not the applicant in this case and the document and testimony do not afford any basis for me to conclude that ABC Employee Group is organized and operated exclusively for educational purposes. No documentary evidence was admitted showing that ABC Employee Group was responsible for

regulatory services prior to the two days before the hearing, when ABC Employee Group assumed this obligation from MMM Corporation.

During direct-examination of Mr. John Doe, Senior Director of Financial Reporting, he was asked the following:

Q. Who is your employer?

A. MMM Corporation.

Q. Are you employed in any capacity by ABC Employee Group?

A. Yes. I'm actually an employee of ABC Employee Group.

Tr. pp. 45-46.

Mr. John Doe then testified as to the cost savings enjoyed by MMM Corporation's affiliated schools when he centralized their accounting functions. Tr. pp. 46-55; App. Ex. No. 5. It is unclear if he centralized the accounting functions as an employee of MMM Corporation, who he stated is his employer (but is not the applicant in this case), or as an employee of ABC Employee Group, where he is "actually" an employee. Since the Services Agreements were assigned to ABC Employee Group only two days before the evidentiary hearing, I assume that what must have been a lengthy centralization process was completed by Mr. John Doe as a MMM Corporation employee for MMM Corporation subsidiaries. Why this qualifies ABC Employee Group for a use tax exemption and why this indicates that ABC Employee Group is organized and operated exclusively for educational purposes was not clearly and convincingly explained at the evidentiary hearing.

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 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). In addition, great caution must be exercised in determining whether an institution is organized and operated exclusively for educational purposes. Otherwise, any increases in lost revenue costs attributable to unwarranted application of the use tax exemption will cause damage to public treasuries and the overall tax base. In this case, ABC Employee Group has failed to prove first, that it is organized and operated exclusively for educational purposes and, second, that it falls within the limited class of organizations that the Legislature meant to be exempt from use tax purchases of tangible personal property.

For the above stated reasons, I recommend that the Department's determination denying the applicant, ABC Employee Group, LLC, a use tax identification number be affirmed.

Kenneth J. Galvin

August 13, 2007