

**ST 12-04**

**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**

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

v.

**ABC COUNCIL,**

**TAXPAYER**

**No: 10 ST 0460**

**Sales Tax Exemption**

**Kenneth J. Galvin**

**Administrative Law Judge**

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**RECOMMENDATION FOR DISPOSITION**

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

**SYNOPSIS:** ABC Council (hereinafter “Council”) 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 Council’s request twice, with Council formally protesting and requesting a hearing following the issuance of the Second Denial of Sales Tax Exemption on October 14, 2010. Dept. Ex. No. 1.

An evidentiary hearing was held in this matter on January 19, 2012, with testimony from Ms. Jane Doe. The sole issue to be determined at the hearing was

whether Council 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 the Department’s second 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 October 14, 2010. Tr. p. 5; Dept. Ex. No. 1.

**CONCLUSIONS OF LAW:**

An examination of the record establishes that Council has not 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 affirmed. In support thereof, I make the following conclusions.

Council 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). 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).

Council caused to be admitted into evidence a document entitled “The Village Community and Cultural Center Proposal, 2009-2010.” According to this document, the Council plans to build a cultural center at a “proposed site” located at 333 West 87<sup>th</sup> Street in Chicago. The cultural center will offer “educational services, vocational trades, jobs training and related resources, tutoring, after school programs, various forms of math, reading, science, storytelling, home work, other education assisted programs, college resources and application preparations, education funding information, GED training, computer training, financial management resources, business operational management, starting business resource programs for teens to adults and cultural history...” App. Ex. No. 1. This is the only document admitted into evidence on behalf of Council.

According to Ms. Jane Doe's testimony, Council just received 501(c)(3) status. She testified that Council has tried to access public resources that would enable it to grow and bring more resources into the community for social and economic growth. Tr. p. 6. Ms. Jane Doe testified further that “[W]e are in the process of being delayed... because

of some issues with the public entity that we had actually engaged in required services.” Tr. p. 7. “... At this point, our community center is on hold until we get the answers and then they provide the necessary resources that we had required from those offices to actually represent what we had wanted.” Tr. p. 8. “[The Alderman is] part of the problem that delayed these issues that could have already been in place if he had followed through.” Tr. p. 17. “... The tax exemption from the State would be an asset to the community as far as once we get to the point that we need to develop this space.” Tr. p. 9.

In order to determine whether an organization meets the Methodist Old People’s Home guidelines, reliable financial statements are required. No financial statements were offered into evidence. Without financial statements, I am unable to determine the source of Council’s funding or that the funds are held in trust for charitable purposes or that Council is not providing profit in a private sense to persons connected with it.

Additionally, no charter, articles of incorporation, bylaws or operating manuals were admitted into evidence on behalf of Council. No written statement of Council’s charitable purpose was offered into evidence. It is unclear from the record exactly what charitable benefits Council is now providing or intends to provide when the cultural center is built. I am unable to determine from this record whether Council is dispensing charity to all who need and apply for it, whether Council is placing obstacles in the way of those who would avail themselves of the charitable benefits it dispenses and whether Council’s benefits are for an indefinite number of persons.

In exemption cases, the taxpayer bears the burden of proving “by clear and convincing” evidence that the exemption applies. Evangelical Hospitals Corp. v. Department of Revenue, 223 Ill. App. 3d 225 (2d Dist.1991). The Department’s second

denial of Council's request for a sales tax exemption is presumed to be correct, and Council had 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 (2<sup>nd</sup> 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 exemption. Sprague v. Johnson, 195 Ill. App. 3d 798 (4<sup>th</sup> Dist. 1990). The evidence and testimony presented at the hearing indicate that Council may, at some point in the future, perform some commendable services for the community. However, the absence of documentary evidence in this case forces me to conclude that Council has not proven, by clear and convincing evidence, that it is a charitable institution in accordance with the guidelines of Methodist Old Peoples Home. For the above stated reasons, I recommend that the Department's determination denying the applicant a sales tax identification number be affirmed

ENTER:

Kenneth J. Galvin

Date: April 12, 2012