

ST 01-10

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**

"FESTIVALE, INC.,",

Taxpayer

v.

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

No. 00-ST-0000

IBT: 0000-0000

RECOMMENDATION FOR DISPOSITION

Appearances: Shepard Smith, Special Assistant Attorney General for the Illinois Department of Revenue. Applicant appeared pro se through its corporate officers.

Synopsis:

This matter comes on for hearing pursuant to "Festivale, Inc.'s" ("taxpayer") timely protest of the Notice of Denial issued on June 5, 1998. The issue at hearing was whether taxpayer qualifies for a sales tax exemption identification number under Section 2-5(9) of the Retailers' Occupation Tax Act ("ROTA"), 35 ILCS 120/2-5(9). After consideration of the evidence at hearing, it is recommended that this matter be resolved in favor of the taxpayer.

FINDINGS OF FACT:

1. The Department's Notice of Denial, dated June 5, 1998, was admitted in the record under the certificate of the Director of the Department. Dept. Ex. 1.
2. "Festivale, Inc." was incorporated in 1993 in the state of Illinois as a not-for-profit corporation. Taxpayer Ex. No. 6 (Articles of Incorporation).
3. "Festivale, Inc." was organized to provide cultural and educational activities to the community. It coordinates an arts festival given every New Year's eve in (Someplace), Illinois. Tr. pp. 10, 11; Taxpayer Ex. Nos. 1, 3. This family-oriented festival is an alcohol-free, community-wide celebration of the arts. The cultural programming includes music and dance presentations, folk and line dancing, storytelling for children, dramatic, comedy and improv theater performances, mimes, puppet shows, art-making and poetry readings. Taxpayer's Ex. Nos. 1, 3, 5, 8; Tr. p. 7.
4. Taxpayer seeks to expose low-income adults and children to a display of the arts and to various ethnic organizations. In furtherance of this goal, it contributes over 1,000 admission buttons to charity organizations in (Someplace) including, Better Existence with HIV (BE-HIV), Childcare Network of (Someplace), Rice Children's Home and the (Someplace) Shelter for Battered Women. Taxpayer Ex. No. 2. The buttons are used as the festival's admission ticket. Taxpayer Ex. Nos. 2, 5; Tr. p. 8.
5. "Festivale, Inc.'s" articles of incorporation state the purpose for which the corporation was organized as follows:

The corporation is organized exclusively for charitable, educational, religious or scientific purposes within the meaning of Section 501(c)(3) of

the Internal Revenue Code. To develop and sponsor a series of cultural and education programs for the community.

Taxpayer's Ex. No. 6.

6. Taxpayer is exempt from federal income tax under Section 501(a) of the Internal Revenue Code ("IRC") as an organization outlined in IRC §501(c)(3).

Taxpayer's Ex. No. 7.

7. "Festivale's" amended and restated bylaws state the purpose of the organization as follows: "To develop and sponsor annual cultural and educational programs of benefit to the community." Taxpayer's Ex. No. 8.

CONCLUSIONS OF LAW:

An examination of the record establishes that taxpayer has demonstrated, by the presentation of testimony and exhibits, evidence sufficient to warrant an exemption from sales tax. Accordingly, under the reasoning given below, the taxpayer should be granted an exemption under 35 ILCS 120/2-5(9). In support thereof, I make the following conclusions:

The taxpayer seeks to qualify for an exemption identification number under Section 120/2-5(9) of the ROTA which states as follows:

Personal property sold to a not-for-profit arts or cultural organization that establishes, by proof required by the Department by rule, that it has received an exemption under Section 501(c)(3) of the Internal Revenue Code (footnote omitted) and that is organized and operated for the presentation or support of arts or cultural programming, activities, or services. These organizations include, but are not limited to, music and dramatic arts organizations such as symphony orchestras and theatrical groups, arts and cultural service organizations, local arts councils, visual arts organizations, and media arts organizations.

35 ILCS 120/2-5(9)(effective Aug. 6, 1999).

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, 231 (2nd Dist. 1991). Moreover, it is well established that there is a presumption against exemption, therefore, “exemptions are to be strictly construed” with any doubts concerning the applicability of an exemption “resolved in favor of taxation.” Van’s Material Co. Inc. v. Department of Revenue, 131 Ill. 2d 196 (1989).

The statute requires that taxpayer: 1) qualify as a not-for-profit organization; 2) qualify as an exempt organization under IRC Section 501(c)(3); and 3) be organized and operated for the presentation of cultural programs and activities. After reviewing the evidence of record, it is clear that taxpayer met these criteria.

Taxpayer is incorporated under the laws of Illinois as a not-for-profit corporation. Taxpayer’s Ex. No. 6. Further, taxpayer provided documents proving that it qualifies as an exempt organization under Section 501(c)(3) of the IRC. Taxpayer’s Ex. No. 7. Lastly, the articles of corporation, the corporate bylaws and the testimony at hearing established that "Festivale, Inc." was organized to provide cultural and educational activities to the community, in fact, the organization’s main function is coordinating an arts festival in (Someplace). This family-oriented festival is an alcohol-free, community-wide celebration of the arts given every New Year’s eve. The cultural programming includes presentations of music and dance, folk and line dancing, storytelling for children, dramatic, comedy and improv theater performances, mimes, puppet shows, art-making and poetry readings. Taxpayer’s Ex. No. 5.

The Department argues that the taxpayer does not qualify under the statute for two reasons: it is only a part-time organization and it “makes money.” Tr. pp. 16, 17.

These arguments, however, are not supported by the plain language of the statute. First, the exemption statute only requires that an organization provide cultural activities and programming, it does not disqualify an organization because the cultural event it sponsors occurs only once a year. Second, it is true that taxpayer had an excess of revenues over expenditures for 1998 and 1999, although this was not always the case in prior years. Taxpayer Ex. No. 9; Tr. pp. 19, 20. This excess revenue is used to further the organization's goals and provides a safety net for years in which it incurs a loss. Tr. pp. 19, 20. Further, despite the Department's contention, a not-for-profit company is not prohibited from having an excess of revenue over expenditures in a given year. *See*, The Not-For-Profit Corporation Act of Illinois, 805 **ILCS** 105/101.01 *et seq.*; Taxpayer's Ex. No. 6.

Based upon a review of the evidence presented at hearing, it is clear that this organization falls squarely within the parameters of the statute. 35 **ILCS** 120/2-5. It is, therefore, my recommendation that taxpayer's application for a sales tax exemption number be granted.

Date: May 16, 2001

Christine O'Donoghue
Administrative Law Judge