

ST 96-55

Tax Type: SALES TAX

Issue: Exemption From Tax (Charitable or Other Exempt Type)

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

TAXPAYER)	
)	
Applicant)	
)	Docket #
v.)	IBT #
)	
THE DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS)	

RECOMMENDATION FOR DISPOSITION

Synopsis:

TAXPAYER'S DIRECTOR, Ph.D., Director of the TAXPAYER (the "Taxpayer" or "Applicant"), requested a hearing regarding the denial by the Illinois Department of Revenue (the "Department") of the applicant's request for a sales tax exemption identification number. The Department denied the taxpayer's request based upon the fact that the taxpayer did not qualify under the Illinois Statutes as an exempt organization. The taxpayer is a research center dealing in issues of human reproduction with particular focus on abortion, eugenics, population control and sexual attitudes. Following a hearing and consideration of the evidence in this case, it is my recommendation that the Director of the Department deny the applicant's request for a sales tax exemption identification number.

Findings of Fact:

1. The *prima facie* case of the Department was established by the admission into evidence of the Department's denial of the applicant's request

for an exemption from the payment of Retailer's Occupational and related taxes.

(Dept. Ex. No. 2)

2. Article one of the bylaws of the applicant state that its objective is:

The primary purpose of the organization is to perform original research in the areas of population control, eugenics, abortion, sexual attitudes and practices, and to make this original research, plus previous relevant research published by other sources, more widely accessible for the education of the public. In order to achieve this purpose, the TAXPAYER will:

1) Act as a research center for coordinating research activity relating to issues of human reproduction, with a particular focus on questions surrounding the effects of eugenics, abortion, population control, and sexual attitudes and practices on individuals and society at large;

2) provide funding for qualified individuals and organizations to undertake research into reproductive issues relating to the effects on individuals and societies of sexual attitudes and practices, abortion, population control, and eugenics;

3) Publish original research, summaries of research, bibliographies, and other educational literature on the effects of abortion, population control, eugenics, and sexual attitudes and practices;

4) Publish a newsletter containing a review of recent research developments in the above mentioned topics;

5) Coordinate conferences on the above mentioned topics which will provide researchers with the opportunity to share their findings with each other and to identify new and better research tools for examining these questions;

6) Coordinate other educational opportunities in the form of lectures, panels, public discussion groups or other similar forums for researchers in the above-mentioned areas to address educational groups, university audiences, civic organizations, and the media with information about their research. (Dept. Ex. No. 1)

3. The taxpayer has been granted a 501 (c) (3) designation by the Internal Revenue Service. (Dept. Ex. No. 1)

4. The membership of the applicant, as established in article six of the bylaws, has two classes:

- 1.) Patrons. Any person who contributes monies, goods, or services to the corporation is eligible for membership as a Patron of the TAXPAYER.
- 2.) Research Associates. Membership as a Research Associate will be granted by the Board of Trustees to qualified individuals who have done significant research in the areas relating to issues of human reproduction, with a particular focus on questions surrounding the effects of eugenics, abortion, population control, and sexual attitudes and practices on individuals and society at large, or to qualified individuals who have been authorized to carry out such research under the auspices of the TAXPAYER. (Dept. Ex. No. 1)

5. The Financial Report submitted by the applicant for the fiscal year ending June 30, 1994 shows income of \$34,353.18, expenses of \$25,277.11 and assets of \$26,233.44. (Dept. Ex. No. 1)

6. The applicant, in conjunction with the Association for Interdisciplinary Research, has organized a project to collect case studies on the negative effects of abortions. Pro-lifers are asked to distribute the case study forms.¹ (Dept. Ex. No. 5)

7. Applicant alleges that the institute is a charitable organization and should qualify for a tax exemption based upon that criteria. In support, the applicant wrote "clearly the prevention and treatment of substance abuse, suicidal behavior and other physical and psychological problems which result from family planning related to trauma (abortion, adoption, miscarriage,

¹. I found it very informative to read the back of the Abortion Case Study Project survey form. Specifically, the document is entitled "YOUR HELP IS NEEDED TO DOCUMENT THE PAIN" and the first portion states:

Two academic research groups, the Association for Interdisciplinary Research and the TAXPAYER, have organized a national project to collect case studies documenting the negative impact of abortion on women, men, and relatives. The goal of this project is to collect tens of thousands of testimonies from people who have suffered emotionally or physically from an abortion experience. All pro-lifers are being asked to help to distribute this case study form throughout their communities.

Most pro-lifers are now aware of Post-Abortion Syndrome (PAS) and the destructive effects it has had on the lives of the women and men who have aborted their children. But widespread recognition of this problem is being hampered by the overwhelming pro-abortion bias which exists in the media and academic world.

contraceptive related sequelae [sic] and eugenic programs) is beneficial to public health." (Dept. Ex. Nos. 3 and 5; Tr. p. 17)

8. Applicant studies the impact of abortions on adolescents and adults. Applicant then disseminates the information to ministers and other counselors to enable them to address the abortion question. (Tr. pp. 14-15)

9. One of applicant's goals is to move women who have experienced abortion trauma to people who are trained in therapy, a goal that the applicant feels is similar to activities done by other organizations that have qualified for exemption from Illinois tax liabilities. (Tr. p. 18)

10. A major project that the applicant is conducting is called "the Jerico Plan", an outreach program to distribute books free of charge to clergy around the country regarding the abortion issue. The applicant feels that:

The clergy need to be -- drawing on our research, we need to educate clergy to a greater understanding of the needs of those who have been involved in abortion, their fear of being judged and their need to feel understood, that people understand why they made the choices they did and that there's a desire to include them, not to exclude them and treat them differently. (Tr. p. 19)

11. The applicant solicits funds for the project through fund raising letters wherein it is stated that they need to raise at least \$15,000 to print an initial run of 5000 copies of The Jerico Plan: Breaking Down the Walls Which Prevent Post-Abortion Healing, a book which "provides preachers with a working knowledge of post-abortion issues, sample sermons, testimonies, and a very specific multi-step process for creating a unifying and healing environment in their own church communities". (Dept. Ex. No. 5)

12. The applicant is attempting to gain additional governmental revenues for what they consider to be the proper funding for Post-Abortion Syndrome research.² (Dept. Ex. No. 5)

². "YOUR HELP IS NEEDED TO DOCUMENT THE PAIN" continues with:

While public health officials and scholars do not deny that some women are severely hurt, physically and psychologically, by abortion, they insist that very few women suffer such problems. The opinions of these pro-abortion "experts" carry extraordinary weight in the media, the legislatures, and the U.S. Surgeon General's Office. One result is that proper funding for PAS research is being stifled on

13. Applicant assisted an individual who was a victim of a severe post-abortion trauma and was not able to afford therapy. There was a case study to be developed from the particular case. (Tr. pp. 20-21)

14. The applicant wishes to convince various groups of the reality of the Post-Abortion Syndrome.³ (Dept. Ex. No. 5)

15. TAXPAYER'S DIRECTOR is the founder of the applicant and is supporting the effort through revenue from writing. (Tr. p. 43)

16. The applicant appeals to individuals that support the pro-life agenda and requests that those individuals contact their legislators, using the case studies and testimonials from the Abortion Case Study Project, to influence the lawmakers.⁴ (Dept. Ex. No. 5)

the grounds that it is unnecessary. More importantly, there are absolutely no government programs to aid women and men in post-abortion recovery.

³. "YOUR HELP IS NEEDED TO DOCUMENT THE PAIN" further states:

The only way to convince indifferent bureaucrats, biased journalists, and hostile academics of the reality of PAS is for us to work together to document PAS in such an impressive way that it can no longer be denied. To address this need, we are engaged in many projects, including a national random survey, analysis of national data bases, literature reviews, and the collection of case studies.

⁴. "YOUR HELP IS NEEDED TO DOCUMENT THE PAIN" furthermore asserts:

You can help. As just one part of this effort, we are seeking to collect literally tens of thousands of case studies. These case studies will then be made available to any and all pro-life groups for presentation to their state and federal legislators.

At this time, we have already collected over 1,300 pages of testimonies. These are available to researchers for qualitative analysis, or organizations who would like to use it for their educational or lobbying efforts. Believe me, these testimonies make an impressive thump when dropped on the desk of a legislator or editor who doesn't believe women are negatively effected by abortion. Reading a few of these testimonies may not be enough to immediately convert an intransigent "pro-choicer," but they will open their minds to the reality that at least *some* women suffer immense pain from their safe and legal abortions" and that others are being forced into *unwanted abortions*. Call or write for details if your organization wants to order a set.

It should be understood that this particular project is not a statistical study. It is intended only to accumulate an impressive number of personal testimonies to demonstrate that the reported problems are not limited to a few isolated cases.

17. The major activity of the applicant is complimentary distribution of its newsletter, *The Post-Abortion Review*, and distribution of the survey form to women who have had abortions. (Dept. Ex. No 5; Tr. pp. 43-45)

18. The applicant acts as a central location for the gathering of the results of the Abortion Case Study Project and makes that information available to anyone who wishes it.⁵ (Dept. Ex. No. 5)

19. The applicant submitted documents and testimony in support of its assertion that it was a charitable organization similar to the American Cancer Society. (Dept. Ex. No. 5; Tr.. pp. 14, 21-23, 27-30,)

20. The Abortion Case Study Project survey form contains information on the back entitled "YOUR HELP IS NEEDED TO DOCUMENT THE PAIN" (see footnotes 1 thru 5) that details that the applicant is a pro-life-anti-abortion group that hopes to influence legislation regarding the availability and legality of abortions. (Dept. Ex. No. 5)

21. The majority of applicant's expenditures is for newsletters and postage. (Tr. pp. 43-44)

22. The applicant made a discovery demand upon the Department which was denied by an Order dated October 23, 1995. The certified copy was returned as unclaimed. (Dept. Ex. No. 5; Tr. pp. 13, 24-28)

Conclusions of Law:

⁵. "YOUR HELP IS NEEDED TO DOCUMENT THE PAIN" ends by stating:

Which brings us to one very important point: The TAXPAYER is available only as a central collection point for this project. *Please do NOT ask women to contact the TAXPAYER with requests for copies of the form. The Institute does not yet have the personnel to answer numerous requests.*

This project is financially viable only if supporters around the country donate their own time and copying machines for this work. Conversely, while the results will be gathered at the TAXPAYER, they will be available to everyone.

How many testimonies can we gather? 5,000? 10,000? 30,000? 150,000? You can make a difference by distributing just 200 copies of this form. Together we can build a mountain of testimonies that even the pro-abortion media can't ignore. Please help.

The Retailer's Occupation Tax and related tax laws found at 35 **ILCS** 120/1-1 *et seq.*, imposes a tax on a privilege of using and purchasing, in this state, tangible personal property purchased at retail from a retailer. The laws also set out various exemptions for specific entities. At issue is whether the applicant qualifies for an exemption from taxation as an organization which is organized and operated exclusively for charitable, religious or educational purposes. (35 **ILCS** 122-5 (11))

Taxation is the rule; tax exemption is the exception. Rogers Park Post No. 108 v. Brenza, 8 Ill.2d 286 (1956)

A statute which exempts property from taxation should be strictly construed in favor of taxation, and the burden is on the person claiming an exemption to prove clearly and conclusively that he is entitled to one. People ex rel. Cannon v. Southern Illinois Hospital Corp., 404 Ill. 66 (1949); Coyne Electrical School v. Paschen, 12 Ill.2d 387, 390 (1957); Methodist Old Peoples Home v. Korzen, 39 Ill.2d 149, 155 (1968); People ex rel. Nordlund v. Winnebago Home for the Aged, 40 Ill.2d 91, 99-100 (1968); Willows v. Munson, 43 Ill.2d 203 (1969); People ex rel. County Collector v. Hopedale Med. Foundation, 46 Ill.2d 450 (1970)

In determining whether property is included within the scope of an exemption, all facts are to be construed and all debatable questions resolved in favor of taxation. Methodist Old Peoples Home v. Korzen, 39 Ill.2d 149 (1968); Kiwanis International v. Lorenz, 23 Ill.2d 141 (1961); Rotary International v. Paschen, 14 Ill.2d 480 (1958)

It is not enough simply to be a nonprofit organization or institution. (86 Ill. Adm. Code ch. 1, Sec. 130.2005 (a)(1)(B)) To qualify for the exemption, the organization must be organized "and operated" exclusively for charitable purposes. In order to determine the purpose of the organization, a corporation's charter can be referenced or, in the case of an unincorporated

society, association, etc., the Constitution and By-laws can be looked at to determine the purpose. (86 Ill. Adm. Code ch. 1 Sec. 130.2005(j))

In the instant case, the applicants bylaws are very clear as to the purpose of the applicant, which is to perform original research in the areas of population control, eugenics, abortion, sexual attitudes and practices, and to make this original research, plus previous relevant research published by other sources, more widely accessible for the education of the public. The statement of the applicant on the back of the survey form is even more enlightening. The applicant has a pro-life agenda and wishes to influence legislation to agree with that position. This is not a charitable endeavor as defined by Illinois law.

In order to qualify as an exclusively charitable organization, the Courts have established that the organization's application must be measured against the test set out in Methodist Old Peoples Home v. Korzen, 39 Ill.2d 149 (1968). The test requires that in order to qualify as an exclusively charitable organization, the organization:

1. must benefit an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare-or in some way reduce the burdens of government;
2. must have no capital, capital stock, or shareholders, earn no profits or dividend;
3. must derive its funds mainly from public and private charity and hold them in trust for the objects and purposes expressed in its charter;
4. must dispense charity to all who need and apply for it, and must not provide gain or profit in a private sense to any person connected with it; and
5. must not place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits dispensed.
6. The term "exclusively" as used in this context means the organization's primary purpose and not a secondary or incidental purpose. *id.*

The seminal case regarding exemptions for research organizations is Gas Research Institute v. Dep't of Revenue, 154 Ill.App.3d 403 (1987), *cert. den.* 116 Ill.2d 554. In the case, the Appellate Court found that the Research Institute was not entitled to an exemption because the Institute's charitable activities were merely incidental. The applicant herein, in its post-hearing

correspondence, incorrectly asserted that an exemption was given to the Institute.

In Gas Research Institute, the Appellate Court found that the primary purpose of the institute was to enhance the position of natural gas in the energy marketplace. *Supra*, at 436 The court held that purpose did not qualify the applicant for an exemption from the imposition of sales tax. The court found the institute benefited a specific group with the benefit to the public only incidental.

At issue herein is an even stronger testimonial regarding an interest that only incidentally benefits the public. An agency with a political agenda that attempts to influence legislation with respect to an anti-abortion, pro-life methodology certainly does not qualify as a charitable organization. It is very clear from the evidence of record that the facts in this case are even stronger against granting a charitable exemption, than those found in Gas Research. The TAXPAYER has a specific persuasion and a specific bent and that is to influence and educate people regarding the allowance and ramifications of abortions.

Based upon the information and testimony submitted by the applicant, I find that they do not qualify for a charitable sales tax exemption identification number. I therefore recommend that the Director of the Department uphold the denial of the exemption.

Respectfully Submitted,

Barbara S. Rowe
Administrative Law Judge
November 21, 1996