

ST 08-8

Tax Type: Sales Tax

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

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

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

v.

**ABC HOME
OWNERSHIP, NFP**

Taxpayer

Docket # 07-ST-0000

Claim for Exemption Number

RECOMMENDATION FOR DISPOSITION

Appearances: Terry Shafer, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Lyn M. Schollett, Attorney at Law, for ABC Home Ownership, NFP

Synopsis:

ABC Home Ownership, NFP (“taxpayer”) applied 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 use and retailers’ occupation taxes. The Department denied the application, and the taxpayer timely protested the denial. An evidentiary hearing was held during which the sole issue presented was whether the taxpayer is organized and operated exclusively for 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 Department contends that the taxpayer is not organized and operated exclusively for 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 is an Illinois not-for-profit corporation that was organized in November 2001; it has no capital, capital stock, or shareholders. (Taxpayer Ex. #1; #3)
2. The articles of incorporation indicate the taxpayer was organized to promote and facilitate owner occupied residencies within the ABC Neighborhood (“ABC”) in Anywhere, Illinois. (Taxpayer Ex. #1, p. 2; Tr. p. 11)
3. The bylaws state its purpose as follows:

The purpose of the Corporation is to preserve and improve living conditions, quality of life and a sense of community within ABC. ABC Home Ownership will achieve its mission by fostering collaboration among homeowners, community resources and volunteers to purchase and renovate homes, promote owner occupancy, develop resident relationships and beautify the neighborhood. (Taxpayer Ex. #3)

4. The corporation is not a membership organization. Its fiscal year ends on December 31. (Taxpayer Ex. #3; Tr. pp. 18, 24)
5. The taxpayer provided an un-audited statement of income and expenses for October 2005 through June 30, 2007 which shows the following:

Income		
State of Illinois Grant	100,000	
Anywhere Project	<u>1,986</u>	
Total Income		101,986
Expenses		
Insurance	942	
Taxes	<u>633</u>	

Total Expenses	<u>1,575</u>
Income in Excess of Expenses (Taxpayer Ex. #4)	\$100,411

6. On a separate un-audited statement of income and expenses for the time period of September 1, 2005 through September 30, 2006 the taxpayer shows the following:

Income	
Anywhere Project	1,985.60
State of Illinois Grant	100,000.00
Donations	<u>246.00</u>
Total Income	102,231.60
Expenses	
Title Company	500.00
Property Purchase	29,756.84
Insurance	531.00
Taxes	<u>449.88</u>
Total Expenses	<u>31,237.72</u>
Income in Excess of Expenses	\$70,993.88 (Dept. Ex. #8)

7. The members of the taxpayer's Board of Directors do not receive compensation for serving as Board members. The officers of the corporation are not compensated. (Taxpayer Ex. #3; Tr. p. 22)

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. 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 (35 ILCS 120/1 *et seq.*) contains a similar provision. See 35 ILCS 120/2-5(11). The term "exclusively" is not interpreted literally to mean the entity's sole purpose; it is construed to mean the primary purpose but not merely an incidental or secondary purpose. 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, 468-469 (2nd Dist. 1995).

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 its entitlement to the exemption. See 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). The taxpayer must present sufficient documentary evidence to support its claim. *Id.*

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, does not provide gain or profit in a private sense to any person connected with it, and 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 (4) whether the primary purpose of the organization, not any secondary or incidental purpose, is charitable. Methodist Old Peoples Home v. Korzen, 39 Ill. 2d 139, 156-57 (1968); Wyndemere, *supra*. These factors are balanced with an overall focus on whether and how the organization serves the public interest and lessens the State's burden. See Du Page County Board of Review, *supra*.

The evidence in the present case does not show clearly and convincingly that the taxpayer meets most of the guidelines in Methodist Old Peoples Home, *supra*. Although the taxpayer has no capital, capital stock, or shareholders, it is not clear from the record whether the taxpayer derives its funds mainly from public and private charity. "Grant" income is not necessarily public charity; in determining whether grant income is public charity, a distinction must be made between payments from the government that are for services rendered pursuant to a contract and payments that are contributions.¹

The taxpayer's un-audited income and expense statements show income from the State of Illinois of \$100,000 and Anywhere Project of \$1,986. The testimony indicated

¹ This distinction is indicated on Form 990, Return of Organization Exempt From Income Tax, which is filed with the Internal Revenue Service. Line 1(d) on that form shows money received from the government as a contribution, and line 2 shows "program service revenue including government fees and contracts." The taxpayer did not provide its Form 990.

the purpose of the money received from the State was to create a park and construct two signs welcoming people to the neighborhood. (Tr. p. 101) Documentation verifying the type of “grant” (i.e., whether it was payment for services or a contribution) was not provided. The testimony indicated the income from the Anywhere Project was to cover start-up costs (Tr. p. 100), but documentation showing that this was a contribution also was not provided.²

In addition, proof that the taxpayer meets the remaining factors is not included in the record. The taxpayer contends it has “two primary purposes”: (1) to assist individuals who wish to become owner occupants in the neighborhood, and (2) to assist the neighborhood and city in the beautification of the area. (Tr. p. 10) The taxpayer was concerned about the trend in the neighborhood toward increased rental property and intends to maintain the current ratio of ownership to rental property, which is approximately 65 to 35 percent. (Dept. Ex. #5; Tr. p. 32)

For the first goal, the taxpayer’s strategy is to purchase and assist in the renovation or rehabilitation of homes for low to moderate income individuals.³ The taxpayer initially considered building homes in collaboration with the city, but that did not work out. (Tr. p. 60) The taxpayer intends to identify a family or individuals who have low to moderate income and are interested in owning a home in ABC. The taxpayer would then find a residence that is available (i.e., either it is for sale or it will be donated to the taxpayer) and is probably in need of renovation or rehabilitation. (Tr. pp. 11-12)

² The taxpayer also admitted that its income and expense statements do not include all of the expenses incurred. For example, the taxpayer stated it paid \$9,632 for the welcome signs, but this expense is not shown on the statements. (Tr. pp. 55-56) In addition, expenses incurred for the demolition of property to create a park were not included. (Tr. pp. 58, 71)

³ The taxpayer indicated that for some grants it hopes to receive, it would have to help low to moderate income individuals. (Tr. p. 36) The bylaws or mission statement, however, do not refer to low or moderate income individuals. (Tr. p. 25)

The taxpayer would also consider first identifying a home and then finding an owner for it. (Tr. p. 34) The taxpayer acknowledged it is possible it could receive a donation of a few houses, and then it would find someone with low to moderate income to occupy the houses. The taxpayer does not, however, intend to accumulate property. (Tr. p. 34) The taxpayer would like to sell houses to people who intend to live in them as their homes (Tr. p. 32), but the taxpayer contends that it is not a business that is in a position to buy up land. (Tr. p. 44) It intends to only sell property to low to moderate income individuals or families. (Tr. pp. 45-46) The taxpayer would consider assisting someone who might want to rent to own. (Tr. p. 33) The taxpayer indicated it would do anything it could to facilitate a low to moderate income individual to become a homeowner.

In order to receive the exemption identification number, the statute requires a taxpayer to be “organized and operated” exclusively for charitable purposes. See 86 Ill. Admin. Code §130.2005(j)(3). With respect to the taxpayer’s first goal, however, the record does not show how the taxpayer has operated as a charity and does not include specific acts of charity the taxpayer has done to meet its goal. The taxpayer expects people to be referred to it by the city or a similar organization, or the taxpayer would know them as neighbors. (Tr. p. 35) The taxpayer’s vice president indicated that unless something unforeseen happened, she could not imagine the taxpayer owning a piece of property that did not already have an identified family to live in it. (Tr. p. 33) The evidence does not show, however, that the taxpayer has actually identified a family it would help. The evidence does not show an effort to find low to moderate income individuals or that the taxpayer advertised this in any way. The taxpayer admitted that it has not yet purchased any property to renovate and resell. (Tr. p. 43) The process used

to determine who would be eligible to buy the house and what price it will be sold at were also not disclosed.

To assist with the first goal, the taxpayer indicated it intends to provide free training programs, advocacy and support to help people secure a loan or achieve the goal of owning a home. (Tr. p. 14) The taxpayer does not have the assets to loan money and will not provide financial aid to families for a down payment. (Dept. Ex. #5; Tr. p. 27) The taxpayer would help people prepare the house to be livable if it was not. (Tr. p. 28) As incentive to homeowners to promote the rehabilitation of their homes, the taxpayer claims it could provide volunteer help. (Tr. p. 38) The taxpayer said it would do one-on-one consultations with individuals who ask for it and would offer a general training or educational program for people who might have an interest in owning a home. The taxpayer would gather materials from the city and might ask a city representative to participate or help. The taxpayer said it would publicize it, and anyone could attend. (Tr. pp. 104-105)

Again, the record does not include evidence that the taxpayer has done any charitable activities to reach its goal. The taxpayer indicated that its charity is the free training, support, advocacy, assistance, and physical services that it would offer to future home owners, but it has not performed any of these services. The taxpayer has not actually conducted an educational workshop and indicated it has not done so because it does not have a targeted family or home. (Tr. p. 78) As previously stated, the taxpayer has not advertised its services or attempted to find a potential home owner in any way. The taxpayer has not actually facilitated the purchase of a home.

The taxpayer's second main goal is to assist the neighborhood and city in the beautification of the area, and its primary strategy for this is to develop a passive park. A passive park is one without playground equipment, benches, rocks or pathways. (Tr. p. 13) The taxpayer claims the unlimited public use of the park benefits an indefinite number of people. In addition to the park, the taxpayer intends to improve some of the easements in the neighborhood.

The taxpayer claims to have taken steps to reach this goal, but the taxpayer admitted it did not provide documentation to support what it has done. (Tr. p. 78) The testimony is not clear concerning what was done to develop a park. During part of the testimony the taxpayer indicated it purchased three parcels of property for a park, and two of them were vacant when purchased. (Tr. p. 47) At another point, the testimony indicated that two of the parcels had structures on them: the parcel at 2363 South Tenth had a structure that was demolished (Tr. p. 66), and the parcel at 915 Wellesley had a dwelling on it that had burned and was not livable. (Tr. p. 73) There are currently no structures on the parcels, but one parcel still needs the slab removed. (Tr. p. 48) It is not clear exactly what the taxpayer has done on each of these parcels; the taxpayer claims it graded and prepared them, but there is no evidence of this. (Tr. pp. 46-47) The taxpayer intends to purchase a fourth parcel at Anywhere when it receives a grant to do so.⁴ (Tr. p. 63) The taxpayer contends it actually improved an easement in the neighborhood, but again did not give supporting documentation of this.

As previously mentioned, exemption provisions are strictly construed, and all doubts must be resolved in favor of taxation. See Wyndemere, *supra*. The evidence

⁴ At one point the testimony indicated the fourth parcel is vacant (Tr. p. 48), at another point the testimony indicated there is a dwelling on the fourth parcel (Tr. p. 64).

must be clear and convincing in order to find the taxpayer has met its legal burden of establishing it is organized and operated exclusively for charitable purposes. *Id.* The evidence presented in this case does not support a finding that the taxpayer's income is mainly from donations or that it has done any charitable acts in pursuit of its goal. Because the taxpayer has not presented sufficient evidence to show that it meets most of the guidelines in Methodist Old Peoples Home, *supra*, the request for an exemption identification number must be denied.

Recommendation:

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

Linda Olivero
Administrative Law Judge

Enter: May 27, 2008