

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

HOLIDAY ROTARY ENDOWMENT)	
FUND, INC.,)	
)	
Petitioner,)	
)	
vs.)	Case No. 97-5354
)	
DEPARTMENT OF REVENUE,)	
)	
Respondent.)	
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RECOMMENDED ORDER

Pursuant to notice, a formal hearing was conducted in this case on September 10, 1998, in Tampa, Florida, before Lawrence P. Stevenson, a duly designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Larry C. Schalles, C.P.A.
Treasurer, Holiday Rotary
Endowment Fund, Inc.
5728 Main Street
New Port Richey, Florida 34652

For Respondent: William B. Nickell
Assistant General Counsel
Department of Revenue
501 South Calhoun Street, Suite 304
Tallahassee, Florida 32399-1050

STATEMENT OF THE ISSUE

The issue presented for decision in this case is whether the Holiday Rotary Endowment Fund, Inc. ("Holiday Endowment") is eligible for a consumer certificate of exemption as a charitable institution pursuant to Section 212.08(7)(o), Florida Statutes.

PRELIMINARY STATEMENT

On or about October 13, 1997, the Department of Revenue issued its notice of intent to deny the Holiday Endowment's application for a consumer's certificate of exemption, pursuant to Section 212.08(7), Florida Statutes. On October 24, 1997, the Holiday Endowment timely challenged that denial with a request for hearing. On November 7, 1997, the Department forwarded the request to the Division of Administrative Hearings for the assignment of an Administrative Law Judge and the conduct of a formal hearing pursuant to Sections 120.569 and 120.57, Florida Statutes.

On November 19, 1997, this matter was assigned to Judge William F. Quattlebaum, who set the case for final hearing on March 16, 1998. On January 13, 1998, the parties filed a joint stipulation of facts. By order dated February 4, 1998, the case was continued and ultimately rescheduled for September 10, 1998. Due to scheduling conflicts, the case was reassigned to the undersigned and heard on September 10, 1998.

At the final hearing, the Holiday Endowment presented the testimony of Larry C. Schalles, its Treasurer and qualified representative. The Department presented no witnesses.

The Holiday Endowment's Exhibit 1 was admitted into evidence. The Department offered no exhibits.

No transcript of the proceeding was ordered. The Holiday Endowment filed a proposed recommended order on September 16,

1998. The Department of Revenue filed a Proposed Recommended Order on September 22, 1998.

FINDINGS OF FACT

Based on the oral and documentary evidence adduced at the final hearing, and the entire record in this proceeding, the following findings of fact are made:

1. Petitioner, the Holiday Endowment, is an organization incorporated in the State of Florida as a not-for-profit corporation under Chapter 617, Florida Statutes. It was formed in October 1996 by the Holiday Rotary Club of Holiday, Florida, as a vehicle for accruing funds to contribute to the various charities supported by the Holiday Rotary Club.

2. The Holiday Endowment is exempt from federal income tax under Section 501(a) of the Internal Revenue Code as an organization described in Section 501(c)(3), having obtained an exemption letter from the Internal Revenue Service on May 30, 1997.

3. Larry Schalles, Treasurer of the Holiday Endowment, testified that annual fundraising achieves variable results, and that the membership of the Holiday Rotary Club seeks to attain stability in its philanthropic endeavors by placing a portion of its funds into the Holiday Endowment each year. Once the endowment is built up, the interest can be used to pay for scholarships each year, leaving the principal intact.

4. At all times relevant to this proceeding, the sole

active function of the Holiday Endowment has been to raise moneys to establish the endowment fund. All moneys raised by the Holiday Endowment are invested in the fund to provide

scholarships in the future. All of the Holiday Endowment's fund raising activities are conducted by unpaid volunteers.

5. At all times relevant to this proceeding, the Holiday Endowment has made no expenditures of any kind.

6. The Department denied the Holiday Endowment's application for a certificate of exemption on the ground that the Holiday Endowment did not qualify as a charitable institution under the seven criteria set forth in Section 212.08(7)(o)2.b., Florida Statutes.

7. In particular, the Department found that the Holiday Endowment does not expend in excess of 50% of its operational expenditures toward qualified charitable services, meaning that the provision of a charitable service is not the organization's sole or primary function. As set forth above, the Holiday Endowment has in fact made no expenditures of any kind.

8. The Department also found that the Holiday Endowment does not provide a reasonable percentage of services free of charge or at a substantially reduced cost to persons unable to pay for such service.

9. The Holiday Endowment's response is that the exemption should nonetheless be granted, because any expenditures it makes in the future will be for charitable purposes.

CONCLUSIONS OF LAW

10. The Division of Administrative Hearings has jurisdiction over the parties and subject matter of this cause,

pursuant to Section 120.57(1), Florida Statutes.

11. The Department of Revenue is the state agency charged with enforcement of Chapter 212, Florida Statutes. The Department's statutory duties include the issuance of certificates of exemption. Section 212.084, Florida Statutes.

12. The Holiday Endowment has the burden of demonstrating its entitlement to the exemption, which must be strictly construed against the taxpayer seeking it. Capital City Country Club, Inc. v. Tucker, 613 So. 2d 448, 452 (Fla. 1993); Asphalt Pavers, Inc. v. Department of Revenue, 584 So. 2d 55, 57 (Fla. 1st DCA 1991).

13. The Holiday Endowment claims that it is entitled to the certificate of exemption as a "charitable organization" pursuant to Section 212.08(7)(o), Florida Statutes, which provides in pertinent part:

1. There are exempt from the tax imposed by this chapter transactions involving:

* * *

b. Sales or leases to nonprofit religious, nonprofit charitable, nonprofit scientific, or nonprofit educational institutions when used in carrying on their customary nonprofit religious, nonprofit charitable, nonprofit scientific, or nonprofit educational activities, including church cemeteries....

* * *

2. The provisions of this section authorizing exemptions from tax shall be strictly defined, limited, and applied in each category as follows:

* * *

b. "Charitable institutions" means only nonprofit corporations qualified as nonprofit pursuant to s. 501(c)(3), Internal Revenue Code of 1954, as amended, and other nonprofit entities, the sole or primary function of which is to provide, or to raise funds for organizations which provide, one or more of the following services if a reasonable percentage of such service is provided free of charge, or at a substantially reduced cost, to persons, animals, or organizations that are unable to pay for such service:

(I) Medical aid for the relief of disease, injury, or disability;

(II) Regular provision of physical necessities such as food, clothing, or shelter;

(III) Services for the prevention of or rehabilitation of persons from alcoholism or drug abuse; the prevention of suicide; or the alleviation of mental, physical, or sensory health problems;

(IV) Social welfare services including adoption placement, child care, community care for the elderly, and other social welfare services which clearly and substantially benefit a client population which is disadvantaged or suffers a hardship;

(V) Medical research for the relief of disease, injury, or disability;

(VI) Legal services; or

(VII) Food, shelter, or medical care for animals or adoption services, cruelty investigations, or education programs concerning animals;

and the term includes groups providing volunteer staff to organizations designated as charitable organizations under this sub-subparagraph; nonprofit organizations the sole or primary purpose of which is to coordinate, network, or link other institutions designated as charitable

institutions under this sub-subparagraph with those persons, animals, or organizations in need of their services; and nonprofit national, state, district, or other governing, coordinating, or administrative organizations the sole or primary purpose of which is to represent or regulate the customary activities of other institutions designated as charitable institutions under this sub-subparagraph....

14. Strictly construing Section 212.08(7)(o)2.b., Florida Statutes, the charitable exemption is available to the Holiday Endowment only if it satisfies two requirements: (1) it is a designated Section 501(c)(3) nonprofit organization; and (2) its sole or primary function is to provide, or raise funds for organizations that provide, at least one of the seven specifically identified services, if a reasonable percentage of the service is provided free of charge or at a substantially reduced cost to recipients who are unable to pay for the service.

15. Section 212.08(7)(o), Florida Statutes, does not further define the term "sole or primary function." However, the Department of Revenue has provided a definition in Rule 12A-1.001(3)(g)3.e., Florida Administrative Code:

"Sole or primary function" means that a charitable institution, excluding hospitals, must establish and support its function as providing or raising funds for services as outlined in subparagraphs 1. and 2. above [the seven services identified in the statute], by expending in excess of 50.0 percent of the charitable institution's operational expenditures towards "qualified charitable services," as defined in subparagraph 2.a.-g., within the charitable institution's most recent fiscal year.

16. For the Holiday Endowment to fall within the definition of "sole or primary function," it must show that, within its most recent fiscal year, at least 50 percent of its expenditures provided at least one of the seven specifically designated services, or went to organizations that provide at least one of the seven specifically designated services.

17. It was not disputed that the Holiday Endowment has the required federal tax status and thus meets the first requirement for a charitable organization. However, the Holiday Endowment fails to satisfy the second requirement because it did not demonstrate that 50 percent of its expenditures in its most recent fiscal year were for providing, or for the raising of funds for organizations which provide, at least one of the seven designated services in Section 212.08(7)(o)2.b., Florida Statutes. The Holiday Endowment currently provides no charitable services. Thus, the Holiday Endowment is ineligible for the certificate of exemption.

18. Neither party to this proceeding addressed the applicability of either Section 212.084(6), Florida Statutes, or its implementing Rule 12A-1.038(7)(b), Florida Administrative Code. These provisions allow the Department of Revenue to issue temporary exemption certificates to newly organized charitable organizations, when a lack of historical information prevents the applicant from qualifying immediately for an exemption certificate.

19. Whether the Holiday Endowment would qualify for such a temporary certificate cannot be determined from the sparse record of this proceeding. However, nothing in that record shows that the Department of Revenue took any steps to ascertain whether the applicant was aware of this procedure, even when it was plain from the application that the lack of historical expenditure information rendered the Holiday Endowment ineligible for the regular exemption certificate. It is suggested that the Department of Revenue in the future provide more assistance to similar applicants, to the end of making proceedings such as this unnecessary.

RECOMMENDATION

Upon the foregoing Findings of Fact and Conclusions of Law, it is recommended that the Department of Revenue enter a final order denying the certificate of exemption sought by the Holiday Rotary Endowment Fund, Inc.

DONE AND ENTERED this 26th day of October, 1998, in Tallahassee, Leon County, Florida.

LAWRENCE P. STEVENSON
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 26th day of October, 1998.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this recommended order. Any exceptions to this recommended order should be filed with the agency that will issue the final order in this case.