

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

CHILDREN'S CHARITY FUND, INC.,            )  
  )  
      Petitioner,                            )  
  )  
vs.    )     Case No. 97-5687  
  )  
DEPARTMENT OF REVENUE,                 )  
  )  
      Respondent.                         )  
\_\_\_\_\_                                      )

RECOMMENDED ORDER

On March 19, 1998, a formal administrative hearing was held in this case in Sarasota, Florida, before Carolyn S. Holifield, Administrative Law Judge, Division of Administrative Hearings.

APPEARANCES

For Petitioner: Ken Bowron, Sr.  
Executive Director  
Children's Charity Fund, Inc.  
2011 Bispham Road  
Sarasota, Florida 34236

For Respondent: Kevin J. O'Donnell  
Assistant General Counsel  
Department of Revenue  
Post Office Box 6668  
Tallahassee, Florida 32314-6668

STATEMENT OF THE ISSUE

Whether Petitioner, Children's Charity Fund, Inc., qualifies under Section 212.08(7)(o)2.b., Florida Statutes, for a consumer certificate of exemption as a charitable institution.

PRELIMINARY STATEMENT

On August 27, 1997, Petitioner, Children's Charity Fund,

Inc. (Children's Charity Fund), filed an application with the Respondent, Department of Revenue (Department), for a consumer certificate of exemption as a charitable organization. After reviewing Petitioner's application, the Department issued a notice on or about November 3, 1997, whereby it proposed to deny the application. According to the Notice of Intent to Deny, the basis of the Department's decision was that Petitioner failed to meet the qualifications for exemption from sales and use taxation, as set forth in Section 212.08(7), Florida Statutes. Specifically, the Department determined that Children's Charity Fund: (1) did not expend in excess of 50% of its operational expenditures toward qualified charitable services and (2) did not provide a reasonable percentage of services free of charge or at a substantially reduced cost to persons unable to pay for such services. Children's Charity Fund challenged the Department's decision and timely requested a formal hearing. On December 5, 1997, the matter was referred to the Division of Administrative Hearings to conduct a formal hearing.

At the hearing, Petitioner presented the testimony of one witness, Kenneth C. Bowron, Sr., Executive Director, Children's Charity Fund. Respondent presented the testimony of one witness, David Young, Tax Specialist, Office of Central Registration, Department of Revenue. Petitioner offered no exhibits into evidence and the Department offered and had one exhibit admitted into evidence.

The transcript of the proceeding was filed on April 1, 1998.  
Both parties filed proposed recommended orders.

FINDINGS OF FACT

1. Petitioner, Children's Charity Fund, is a not-for-profit corporation and qualifies as a tax-exempt organization pursuant to Section 501(c)(3) of the United States Internal Revenue Code. Petitioner maintains an office in Sarasota, Florida.

2. The articles of incorporation specify that the nature of the business to be transacted and the purpose to be promoted by Children's Charity Fund "shall be exclusively charitable, including raising funds in any lawful manner" for the following purposes: (1) to educate and inform the public about the needs of handicapped and disabled children; (2) to provide referral services and maintain a hot-line for handicapped children; (3) to provide services "in whatever form possible that the Board may deem necessary" for handicapped children and their parents; and (4) to buy medical equipment for handicapped and disabled children.

3. The Children's Charity Fund claims entitlement to a consumer certificate of exemption based primarily on the fourth purpose listed in paragraph 2 above. In carrying out this purpose, the Children's Charity Fund purchases various types of medical equipment for handicapped and disabled children who reside in Florida as well as in other states. The medical equipment is provided to children who need the equipment, but whose parents have no insurance or their requests for the equipment have been turned down by Medicare, Medicaid, or their

insurance companies.

4. In determining which applications for medical equipment it will approve, the Children's Charity Fund has not established income limits for the applicant family. The circumstances of each family are considered on a case-by-case basis and factors other than income are also considered. To date, Children's Charity Fund has never denied an application for medical equipment for a handicapped or disabled child, regardless of family income, if such equipment was needed by the child.

5. In addition to purchasing medical equipment for handicapped and disabled children, the Children's Charity Fund provides Christmas gifts and tickets to events organized and promoted by the Children's Charity Fund such as charity softball games. The Children's Charity Fund claims that these gifts and tickets are charitable services.

6. During its most recent fiscal year, the Children's Charity Fund spent less than 50% of its operational expenditures on qualified charitable services. The evidence at hearing established that during the relevant time period, Children's Charity Fund spent less than 35% of its total operating expenditures on qualified charitable services. This percentage does not meet the requirements of Rule 12A-1.001(3)(g)3.e., Florida Administrative Code, which mandates that the organization seeking tax exempt status as a charitable institution spend "in excess of 50.0 percent of [its] operational expenditures toward qualified charitable services."

7. During its most recent fiscal year, Children's Charity Fund spent approximately 50% of its operating expenditures to pay for fundraising activities.

CONCLUSIONS OF LAW

8. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding. Section 120.57(1), Florida Statutes.

9. The Children's Charity Fund is seeking a consumer certificate of exemption as a "charitable institution" as that term is defined by Section 212.08(7)(o)2.b., Florida Statutes. As an applicant, the Children's Charity Fund bears the burden of proving its entitlement to a certificate of exemption by a preponderance of the evidence.

10. Section 212.08(7)(o)2.b., Florida Statutes, defines "charitable institutions" for purposes of tax exemptions. That section provides the following:

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 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. . .





11. Section 213.06(1), Florida Statutes, authorizes the Department to adopt such rules as are necessary to carry out the intent and purposes of all revenue laws which it administers. Pursuant to this authority, the Department has adopted Rule 12A-1.001(3)(g), Florida Administrative Code. That rule provides in relevant part the following:

1. "Charitable institutions" means only nonprofit corporations qualified as a nonprofit pursuant to s.501(c)(3), United States Internal Revenue Code, 1954, as amended, and other nonprofit entities that meet the following requirements:

- a. the sole or primary function is providing a "qualified charitable service" as defined in this subsection; and
- b. 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.

2. "Qualified charitable service" means:

- a. Medical aid for the relief of disease, injury, or disability;

\* \* \*

3.a. For the purpose of this subsection the following terms and phrases shall have the following meaning:

I. "Persons unable to pay" means persons whose annual income is 150 percent or less of the current Federal Poverty Guidelines or whose uncompensated hospital charges exceed 25 percent of their annual family income for the preceding 12 months. . .

\* \* \*

e. "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, by  
expending in excess of 50.0 percent of the  
charitable institution's operational

expenditures toward qualified charitable services as defined in subparagraph 2.a.--g. within the charitable institution's most recent fiscal year.

12. The provisions of law which authorize a tax exemption must be strictly construed against the person claiming the exemption. Asphalt Pavers, Inc. v. Department of Revenue, 584 So. 2d 55,57 (Fla. 1st DCA 1991). This is consistent with the express language of Section 212.08(7)(o)2., Florida Statutes, which states that "the provisions of this section authorizing exemptions from tax shall be strictly defined, limited, and applied in each category. . ."

13. To qualify as a charitable institution, the Children's Charity Fund must clearly come within the purview of Section 212.08(7)(o)2.b., Florida Statutes. This requires that the organization meet all, not part, of the criteria prescribed in statute.

14. In this case, the Children's Charity Fund has failed to meet its burden. While it has been established that the organization is a nonprofit corporation, is qualified as a 501(c)(3) entity, and provides a qualified charitable service, there are other prescribed criteria that the Children's Charity Fund does not meet.

15. According to Section 212.08(7)(o)2.b., Florida Statutes, and Rule 12A-1.001(3)(g), Florida Administrative Code, quoted above in paragraphs 10 and 11, respectively, an

organization seeking an exemption as a charitable institution must have as its "sole or primary function" to provide or raise funds for organizations which provide a reasonable percentage of qualified charitable services to "persons. . . that are unable to pay for such service." Services which qualify for "charitable services" include medical aid for disabled persons.

16. The purchase of medical equipment for handicapped or disabled children constitutes a qualified charitable service. However, that alone is not enough to bring the Children's Charity Fund within the purview of the applicable statutory and rule provisions. In this case, the Children's Charity Fund must demonstrate that providing such service is the "sole or primary" function of its organization and that a reasonable percentage of such services are provided free or at a substantially reduced cost to "persons unable to pay."

17. As defined in Rule 12A-1.001(3)(g)3.e., Florida Administrative Code, a qualified charitable service is deemed to be an organization's sole or primary function if that entity spends more than 50% of its operating funds on that service, as reflected on the audit of its most recent fiscal year. A reasonable percentage of these services must be provided free or at a substantially reduced cost to those who are unable to pay. "Persons unable to pay" are individuals whose annual family income is 150% or less of the Federal Poverty Guidelines or whose uncompensated hospital charges exceed their annual family income

for the preceding 12 months. Rule 12A-1.001(3)(g)3.a., Florida Administrative Code. The Children's Charity Fund does not meet either of these criteria.

18. While the evidence established that the Children's Charity Fund provides a qualified charitable service free of charge, it is undisputed that providing such services is not the agency's "sole or primary function" within the meaning of Rule 12A-1.001(3)3.e., Florida Administrative Code. To meet this requirement, the Children's Charity Fund must demonstrate that more than 50% of its operating expenditures is spent on providing medical aid. Here, the Children's Charity Fund acknowledges that during its most recent fiscal year, it spent no more than 35% of its total operating expenditures on providing medical equipment to handicapped and disabled children.

19. Having failed to demonstrate that providing medical aid is its "sole or primary function," the Children's Charity Fund is not eligible for a tax exemption as a charitable institution. However, even if Children's Charity Fund had established that providing a qualified charitable service was its "sole or primary function," the agency failed to show that a reasonable percentage of these services were provided to "persons unable to pay" as that term is defined in Rule 12A-1.001(3)(g)3.a.I., Florida Administrative Code. According to that rule, "persons unable to pay" are limited to individuals whose family incomes do not exceed specified limits--those whose family incomes are 150% or less of the Federal Poverty Guidelines or those who have incurred uncompensated hospital charges which exceed 25% of their annual family income for the preceding 12-month period.

20. The Children's Charity Fund admits that it provides medical aid in the form of medical equipment to children who require such equipment regardless of the income levels of those families. This fact may not necessarily preclude the organization's qualifying for tax exempt status, if it is established that a reasonable percentage of its qualified charitable services are provided to "persons unable to pay" as that term is defined in Rule 12A-1.001(3)(g)3.a., Florida Administrative Code. Having failed to establish this, the Children's Charity Fund has failed to meet one of the prescribed criteria required to qualify as a "charitable institution."

21. The Children's Charity Fund argues that the above quoted rule, which interprets "sole or primary purpose" and "persons unable to pay" for purposes of Section 212.08(7)(o)2.b., Florida Statutes, is not law. In light of this position, the Children's Charity Fund asserts that the definitions in Rule 12A-1.001(3), Florida Administrative Code, can not properly serve as a basis for requiring that a certain percentage of operating expenditures be spent for providing medical services. The organization also argues that because the rule is not law, it can not be utilized to require the organization to provide a reasonable percentage of its services to individuals with certain family income limits.

22. In making the argument discussed in paragraph 21 above, the Children's Charity Fund fails to recognize a well-established

legal principle. That principle is that agency rules promulgated under authority of law have the force and effect of law. State of Florida v. Jenkins, 469 So. 2d 733 (Fla. 1985). There being no dispute as to the validity of the Rule 12A-1.003, Florida Administrative Code, the rule has the force and effect of law. Thus, the provisions the aforementioned rule must be applied in determining an entity's eligibility for a tax exemption.

23. Applying the applicable statutory and rule provisions to the Children's Charity Fund, it is clear that the agency does not meet the prescribed eligibility criteria for a tax exemption.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Department of Revenue enter a final order denying a consumer certificate of exemption to Petitioner, the Children's Charity Fund, Inc.

DONE AND ENTERED this 18th day of May, 1998, in Tallahassee, Leon County, Florida.

---

Carolyn S. Holifield  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675 SUNCOM 278-9675  
Fax Filing (850) 921-6847

Filed with the Clerk of the  
Division of Administrative Hearings  
this 18th day of May, 1998.



COPIES FURNISHED:

Ken Bowron, Sr.  
Executive Director  
Children's Charity Fund, Inc.  
2011 Bispham Road  
Sarasota, Florida 34236

Kevin J. O'Donnell  
Assistant General Counsel  
Department of Revenue  
Post Office Box 6668  
Tallahassee, Florida 32314-6668

Linda Lettera  
General Counsel  
Department of Revenue  
204 Carlton Building  
Tallahassee, Florida 32399-0100

Larry Fuchs  
Executive Director  
Department of Revenue  
104 Carlton Building  
Tallahassee, Florida 32399-0100

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.