

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

HAITIAN-AMERICAN COMMUNITY )  
FOUNDATION, INC., )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 98-2207  
 )  
DEPARTMENT OF REVENUE, )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on September 18, 1998, by video between Tallahassee and Fort Lauderdale, Florida, before Claude B. Arrington, a duly designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Edy Sanon, Executive Director  
Haitian American Community Foundation, Inc.  
3740 North Andrews Avenue  
Fort Lauderdale, Florida 33309-5262

For Respondent: William B. Nickell, Esquire  
Department of Revenue  
Post Office Box 6668  
Tallahassee, Florida 32314-6668

STATEMENT OF THE ISSUES

Whether Petitioner is entitled to a consumer's certificate of exemption from sales tax as a "charitable institution" as that term is defined by Section 212.08(7)(o)2b., Florida Statutes.

PRELIMINARY STATEMENT

Petitioner requested a formal administrative hearing following Respondent's denial of Petitioner's application for a consumer's certificate of exemption from sales tax. Petitioner asserted that it was entitled to the exemption because it was a charitable institution. The matter was referred to the Division of Administrative Hearings, and this proceeding followed.

The parties stipulated to certain facts which have been incorporated herein. At the formal hearing, Edy Sanon, Petitioner's executive director, represented his organization and testified on its behalf. Petitioner presented one exhibit, a letter from the Internal Revenue Service, which was accepted into evidence. Respondent presented no witnesses and no exhibits.

No transcript of the proceedings has been filed. The Petitioner and Respondent filed proposed recommended orders, which have been duly considered by the undersigned in the preparation of this Recommended Order. Attached to the Petitioner's proposed recommended order were certain documents that were described by Petitioner as being "new exhibits." Those exhibits were not offered at the formal hearing and have not been considered in the preparation of this Recommended Order. In addition, Petitioner proposed in its Proposed Recommended Order that certain facts, not reflected by the parties pre-hearing stipulation, be incorporated as findings of fact because the parties stipulated to those facts. Those facts are not supported by the record of this proceeding and have not been incorporated

as findings of fact herein. 1/

FINDINGS OF FACT

1. Petitioner is a nonprofit organization incorporated under the laws of the State of Florida as a corporation. Petitioner has applied to Respondent for a certificate of exemption from sales and use tax based on its claim that it is a "charitable institution" within the meaning of, and pursuant to the provisions of, Section 212.08(7)(o)2.b., Florida Statutes. 2/

2. The Internal Revenue Service has determined that Petitioner is exempt from federal income tax under Section 501(a) of the Internal Revenue Code as an organization described in Section 501(c)(3).

3. Edy Sanon, Petitioner's executive director, testified in general terms as to the services performed by Petitioner to persons of Haitian descent. Based on that general testimony, it cannot be determined with any degree of certainty the precise services performed by Petitioner. Mr. Sanon testified that his organization provides translation services and referral services that assist Haitian immigrants in adjusting to life in the United States, becoming employable, and obtaining services from various government agencies.

4. Petitioner engages in fund raising and searches for governmental grants for a center where people can come for help. The extent of its resources expended on fund raising was not established.

5. Mr. Sanon testified that Petitioner provides its services free of charge and that it served approximately 800 clients last year.

6. Chapter 212, Florida Statutes, imposes a tax on sales, use and other transactions. Respondent is the agency of the State of Florida charged with administering Chapter 212, Florida Statutes, and its duties include the issuance of certificates of exemption from tax pursuant to Section 212.08(7)(o), Florida Statutes.

7. Pursuant to its rule-making authority, Respondent has adopted Rule 12A-1.001, Florida Administrative Code, to implement the provisions of Section 212.08(7)(o), Florida Statutes.

8. Although Petitioner has been recognized as a nonprofit organization by the Internal Revenue Service, Petitioner must receive a certificate of exemption from Respondent to be exempt from Florida's tax on sales, use, and other transactions imposed by Chapter 212, Florida Statutes.

9. The provisions of Section 212.08(7)(o), Florida Statutes, and Rule 12A-1.001, Florida Administrative Code, provide the criteria for the exemption sought by Petitioner.

10. Section 212.08(7)(o), Florida Statutes, provides, in pertinent part, an exemption from sales tax as follows:

(o) Religious, charitable, scientific, educational, and veterans' institutions and organizations.

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 . . .

\* \* \*

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:

\* \* \*

(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 . . . 3/

11. Rule 12A-1.001(3)(g), Florida Administrative Code, implements the provisions of Section 212.08(7)(o), Florida Statutes, and provides, in pertinent part, as follows:

(g)1. "Charitable institutions" means only nonprofit corporations qualified as 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.

\* \* \*

3.a. For the purpose of this subsection the following terms and phrases shall have the meaning ascribed to them except when the context clearly indicates a different meaning:

I. "Persons unable to pay" means persons whose annual income is 150 percent or less of the current Federal Poverty Guidelines . . .

\* \* \*

d. "Substantially reduced cost" means the normal charge, market price, or fair market value to a purchaser or recipient, diminished in an amount of considerable quantity.

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

12. Petitioner established that it is a nonprofit organization.

13. Petitioner did not present any financial data at the formal hearing. In the absence of that financial information, it cannot be found that Petitioner disburses more than fifty percent of its expenditures to provide or raise funds for a provider of a statutorily listed service. The absence of that information is fatal to Petitioner's application. 4/

14. The unchallenged testimony of Mr. Sanon was sufficient to establish for the purposes of this proceeding that Petitioner does not charge for its services. Petitioner did not establish at the formal hearing the ability of any of its client to pay a reasonable fee for the services provided by Petitioner.

15. The general testimony of Mr. Sanon failed to establish

that the translation, referral, and other services provided by



Petitioner are "social welfare services" within the meaning of Section 212.08(7)(o)2.b., Florida Statutes. 5/

#### CONCLUSIONS OF LAW

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

17. Tax exemptions are matters of legislative grace. It is a well-recognized rule of law that tax exemptions must be strictly construed against the taxpayer seeking them and in favor of the state. An applicant for an exemption must show clearly that he is entitled under the law to the exemption. The law providing the exemption is to be strictly construed. Sebring Airport Authority v. McIntrye, 642 So. 2d 1072 (Fla. 1994); Capital City Country Club v. Tucker, 613 So. 2d 448 (Fla. 1993); Asphalt Pavers, Inc. v. Dept. of Revenue, 584 So. 2d 55 (Fla. 1st DCA 1991); State Dept. of Revenue v. Anderson, 403 So. 2d 397, 399 (Fla. 1981); Green v. Pederson, 99 So. 2d 292, 296 (Fla. 1957).

18. Petitioner has the burden to prove by competent, substantial evidence that it meets all of the criteria for the exemption set forth by statute and rule. The evidence presented by the Petitioner at the formal hearing did not meet that burden.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that Respondent enter a final order that

denies Petitioner's application for a certificate of exemption.

DONE AND ENTERED this 1st day of December, 1998, in  
Tallahassee, Leon County, Florida.

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CLAUDE B. ARRINGTON  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675 SUNCOM 278-9675  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 1st day of December, 1998.

ENDNOTES

1/ The undersigned entered an Order Requiring Response on November 5, 1998, that gave the Petitioner the opportunity to provide any authority that would permit it to file additional exhibits after the close of the formal hearing. Petitioner was unable to provide such authority and the undersigned knows of none. The Order also required the parties to confer and to file a statement as to whether their pre-hearing stipulation was incomplete. From the separate responses filed by the parties, it cannot be concluded that the factual stipulation contained in the Pre-hearing Stipulation was incomplete.

2/ Section 212.08(7)(o), Florida Statutes, provides an exemption from sales tax to religious, charitable, scientific, educational, and veterans' institutions and organizations. Petitioner is not and does not claim to be a scientific, religious, or educational institution.

3/ There are seven categories of services contained in the statute. The only category that Petitioner claims to provide is social welfare services.

4/ Even if the "new exhibits" submitted by Petitioner with its proposed order are considered to have been appropriately filed, those exhibits are not self-explanatory and do not establish Petitioner's entitlement to the subject exemption.

5/ This finding should not be construed to be a finding that the services provided by Petitioner are not social welfare services

within the meaning of Section 212.08(7)(o)2.b., Florida Statutes. From his testimony, it cannot be determined exactly what Petitioner does or for whom, and, consequently, it cannot be determined that this criteria has been met.

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.