

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

GREATER NEWTOWN COMMUNITY                    )  
REDEVELOPMENT CORPORATION,                )  
  )  
          Petitioner,                            )  
  )  
vs.    )     Case No. 99-2492  
  )  
DEPARTMENT OF REVENUE,                    )  
  )  
          Respondent.                         )  
\_\_\_\_\_)

RECOMMENDED ORDER

On September 22 and 23, 1999, a formal administrative hearing was held in this case before J. Lawrence Johnston, Administrative Law Judge, Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Cynthia E. Porter, Executive Director  
Greater Newtown Community  
Redevelopment Corporation  
1751 Dr. Martin Luther King, Jr., Way  
Sarasota, Florida 34234

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

STATEMENT OF THE ISSUE

The issue in this case is whether Respondent, the Department of Revenue, should grant Petitioner's application for a consumer's certificate of exemption from sales and use tax.

PRELIMINARY STATEMENT

Respondent gave notice of intent to deny Petitioner's application for a consumer's certificate of exemption from sales and use tax, and Petitioner requested a formal administrative hearing. Respondent referred the matter to DOAH, and final hearing was scheduled for September 22, 1999, in Tampa, Florida. Later, the hearing was changed to televideo, with hearing locations in Tampa and Tallahassee.

Petitioner failed to appear for final hearing. Nonetheless, Respondent stipulated to admission of Petitioner's application as Petitioner's Exhibit 1, if Petitioner signified its desire to so stipulate. (Respondent objected to use of the exhibit as sole support for findings of fact except as to Petitioner's articles of incorporation and the letter from the United States Internal Revenue Service (IRS) stating the Petitioner is exempt from federal income tax under Internal Revenue Code (IRC) Section 501(a) as an organization described in IRC Section 501(c)(3).) Respondent presented no evidence at final hearing, did not order a final hearing transcript, and was given ten days to file a proposed recommended order.

The following day, Petitioner requested a telephone hearing to explain why it did not appear for final hearing. The telephone hearing was arranged, and the parties agreed to continuation of final hearing by telephone. Without objection, Petitioner was permitted to supplement the evidentiary record

posthearing with a copy of its Annual Report for the year ending June 30, 1999, which is admitted as Petitioner's Exhibit 2.

Without objection, Respondent was permitted to supplement the record posthearing with copies of final orders in three previous administrative proceedings, which are officially recognized. No other evidence was presented by either party.

Neither party ordered a final hearing transcript. The parties were given ten days from the filing of the late exhibits in which to file proposed recommended orders. After filing of the late exhibits, only Respondent filed a Proposed Recommended Order.

#### FINDINGS OF FACT

1. Petitioner is a nonprofit organization incorporated under the laws of the State of Florida on or about August 27, 1997.

2. Petitioner applied to Respondent for a consumer's certificate of exemption from sales and use tax. While the application indicates that it is based on exemption status as an "enterprise zone," Petitioner clarified at final hearing that it actually was basing its application on exemption status as a "charitable institution." ("Enterprise zone" is not an exemption category under the applicable statutes. See Conclusions of Law, infra.)

3. The IRS has determined that Petitioner is exempt from federal income tax under IRC Section 501(a) as an organization described in IRC Section 501(c)(3).

4. A letter dated February 2, 1999, stated that Petitioner:

was formed in 1997 to plan and implement redevelopment efforts in the Greater Newtown Community which lead to overall improvement in the quality of life of its residents. In the short time since our inception, we have responded to community needs by implementing a broad range of programs that will have a positive impact on our community.

But from the evidence presented (which included no testimony from either party), it is difficult to ascertain factual detail about Petitioner, its activities, or its finances.

5. In addition to grant application and fund-raising activities, it appears that Petitioner has been involved in informational and participation-recruitment meetings and information-gathering surveys for planning purposes (called the Business Retention and Expansion Survey). Petitioner also appears to have been involved in a Storefront Renovation Program and several community celebrations. Petitioner has plans for other economic and community redevelopment activities. But it cannot be ascertained from the evidence which of the other economic development activities have taken place and which are still in grant application or planning stages. For example, documentation regarding Petitioner's involvement in one activity refers to the activity as the "proposed WAGES Employment Challenge."

6. Petitioner obtained \$128,000 of funding from the City of Sarasota for seed money for its economic redevelopment and other activities. Petitioner budgeted to spend the \$128,000 in 1998. The entire budget consists of salaries, fringe benefits, and overhead expenses.

7. According to a "Profit and Loss" statement for January through October 1998, Petitioner spent \$30,581.49 during that time period. All of those expenditures were in the category of payroll and overhead expenses.

8. One activity referenced in Petitioner's documentation is Petitioner's "partnering" with financial institutions and mortgage brokers to process mortgage loans for affordable housing. In that case, the expenditures would be by the other institutions, not by Petitioner.

9. There is no information as to any other expenditures made by Petitioner.

#### CONCLUSIONS OF LAW

10. Petitioner seeks an exemption from tax. It is well recognized that tax exemptions must be construed strictly against the taxpayer seeking their benefit. E.g., Capital City Country Club v. Tucker, 613 So. 2d 448, (Fla. 1993). "While doubtful language in taxing statutes should be resolved in favor of the taxpayer, the reverse is true in construction of exceptions and exemptions from taxation." Department of Revenue v. Skop, 363 So. 2d 678, 680 (Fla. 5th DCA 1980).

11. The burden of proof in this case is on Petitioner to show by clear evidence that it is entitled to a sales tax exemption. Green v. Pederson, 99 So. 2d 292, 296 (Fla. 1957).

12. Section 212.08(7)(o)2., Florida Statutes (1997), states in pertinent part: "The provisions of this section . . . shall be strictly defined, limited and applied in each category." (All statutory references are to Florida Statutes (1997).)

13. To demonstrate that it is entitled to a consumer's certificate of exemption from sales and use tax, an applicant must show that it meets all the criteria of one of the definitions under Section 212.08(7), Florida Statutes. See Gainesville Amateur Radio Society, Inc. v. Department of Revenue, D.O.A.H. Case Number 94-1200 (Final Order dated June 23, 1995). An organization that meets only part of a category's requirements is not eligible for an exemption certificate.

14. Section 212.08(7)(o)2.b, Florida Statutes, defines "charitable institution" as:

[O]nly nonprofit corporations qualified as nonprofit pursuant to s.501(c)(3), United States 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 institutions under this sub-paragraph; nonprofit organizations the sole or primary purpose of which is to coordinate, network, or link other institutions designated as charitable institutions under this 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-paragraph. Notwithstanding any other requirement of this section, any blood bank that relies solely upon volunteer donations of blood and tissue, that is licensed under chapter 483, and that qualifies as tax exempt under s. 501(c)(3) of the Internal Revenue Code constitutes a charitable institution and is exempt from the tax imposed by this part.

15. Rule 12A-1.001(3)(g), Florida Administrative Code, provides in pertinent part:

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.

2. 'Qualified charitable service' means:

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

b. Regular provision of physical necessities such as food, clothing, or shelter;

c. 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; services include public education or awareness programs intended to relieve or prevent any disease, injury, or disability;

d. 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;

e. Medical research for the relief of disease, injury, or disability;

f. Legal services;

g. Food, shelter, or medical care for animals or adoption services, cruelty investigations, or education programs concerning animals;

h. Providing volunteer manpower to charitable institutions as defined in this subsection; or

i. Raising funds for 'charitable institutions' as defined in this subsection.

\* \* \*

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:

\* \* \*

e. 'Sole or primary function' means that a charitable organization, excluding hospitals, must establish and support its function as providing or raising funds for services outlined in subparagraphs 1. and 2. above, by expending in excess of 50.0 percent of the charitable organization's expenditures towards referenced charitable concerns, within the charitable organization's most recent fiscal year.

\* \* \*

4. a. For charitable institutions other than hospitals, a 'reasonable percentage' of the charitable services provided free or at a substantially reduced cost to those unable to pay will be determined by the particular circumstances of each institution. The following factors shall be considered in determining whether a nonprofit entity is providing a reasonable percentage of its charitable services free of charge or at a substantially reduced cost to persons, animals, or institutions unable to pay for such services:

- I. services are provided free of charge;
- II. services are provided at a substantially reduced cost to the recipient;
- III. available services are provided to anyone who requests the service without regard to ability to pay;
- IV. the ratio of services offered without cost or at a substantially reduced cost to the cost of all services provided;
- V. the fair market value of the provided services offered free or at a substantially reduced cost compared to the amount of sales tax savings to the institution resulting from exemption;
- VI. the likelihood that due to the nature of the services provided and the geographic area in which the services are provided, the services will be delivered to those unable to pay;
- VII. medical research services and public education and awareness programs are intended to benefit the public in that they are

directed toward or involve diseases, injuries, or disabilities which can affect members of the public.

b. If a charitable institution, other than a hospital, does not screen to determine whether its clientele are unable to pay, the institution may submit to the Department a statement signed by an officer or director of the institution which specifies the institution's best good faith estimate of the percentage of its services provided without charge or at a substantially reduced cost to persons unable to pay and the basis for the estimate.

16. Petitioner is exempt from federal income tax under IRC Section 501(a) as an organization described in IRC Section 501(c)(3) and so meets this requirement of Section 212.08(7)(o)b, Florida Statutes. But Petitioner proved none of the other requirements for issuance of a consumer's certificate of exemption from sales and use tax.

#### RECOMMENDATION

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

RECOMMENDED that the Department of Revenue enter a final order denying Petitioner's application for a consumer's certificate of exemption from sales and use tax.

DONE AND ENTERED this 5th day of November, 1999, in  
Tallahassee, Leon County, Florida.

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J. LAWRENCE JOHNSTON  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 5th day of November, 1999.

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.