

MONTGOMERY HUMANE SOCIETY
1150 John Overton Drive
Montgomery, AL 36110,

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Petitioner,

DOCKET NO. S. 99-283

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

FINAL ORDER

The Montgomery Humane Society (APetitioner@) applied to the Revenue Department for a sales and use tax exemption certificate. The Department denied the certificate. The Petitioner appealed to the Administrative Law Division pursuant to Code of Ala. 1975, § 40-2A-8(a). A hearing was conducted on July 28, 1999. Sim Penton and Jo Karen Parr represented the Petitioner. Assistant Counsel Keith Maddox represented the Department.

The issue in this case is whether the Petitioner is exempt from Alabama sales and use tax pursuant to Code of Ala. 1975, § 40-9-12(a). That section in relevant part exempts All community chest and united appeal funds, and all charitable, civic and eleemosynary organizations and institutions for whom they solicit funds, . . .@

The Petitioner provides shelter, food, and medical attention for approximately 12,000 needy animals in the Montgomery area annually. The Petitioner also educates children about pet awareness and responsible pet ownership, operates a pet adoption service, and provides a pet visitation program for the elderly.

The Petitioner is qualified as a tax exempt charitable organization under 26 U.S.C. § 501(c)(3). The Petitioner receives funding from the City of Montgomery and Montgomery County. It also receives contributions from individuals and corporations, and also as a member agency of the Heart of Alabama Combined Federal Campaign (ACombined Federal Campaign@).

The Combined Federal Campaign describes itself as a group of voluntary charitable human health and welfare organizations established for purposes of supplying common fundraising, administrative, and management services to its member agencies. The Combined Federal Campaign receives charitable contributions from federal employees in the Montgomery area. Those contributions are then distributed to its member agencies. The Petitioner received approximately \$8,000 from the Combined Federal Campaign in 1998, and has participated as a member agency for at least five years. The Petitioner has also applied to become a member agency in the Montgomery Area United Way.

The Department argues that the Petitioner is not exempt from Alabama taxation under § 40-9-12(a) because it is not a United Way agency. I disagree.

Section 40-9-12(a) provides a broad exemption for all community chest and united appeal funds and for all charitable, civic and eleemosynary organizations for whom they solicit funds. The Petitioner clearly qualifies as a charitable, civic, or eleemosynary organization. See, 26 U.S.C. § 170(c)(2)(B). The issue thus turns on whether the Combined Federal Campaign is a community chest or united appeal fund. Clearly, it is.

Community chest and united appeal fund are not defined by Alabama law. Community chest is, however, defined in the *American Heritage Dictionary*, Second College Edition, as a welfare fund financed by private contributions for aiding various charitable organizations. The Combined Federal Campaign is a community chest under that definition.

I can find no definition for united appeal fund. My understanding is that a united appeal fund is an umbrella organization that solicits and receives charitable contributions for distribution to its member agencies. The Combined Federal Campaign is a united appeal fund under that definition. This is confirmed by Reg. 1.170-2(b)(5)(iii)(c)(3), which concerns the federal income tax charitable deduction at 26 U.S.C. § 170. That regulation equates a public federated fund raising organization, such as the Combined Federal Campaign, with

a community chest or a united appeal fund. **A**An organization is so constituted (as a publicly supported organization) if . . . it receives substantial support from a community chest or similar public federated fund raising organization, such as a united fund or united appeal . . .@

I recognize the rule of statutory construction that an exemption statute must be strictly construed against the exemption. Brundidge Milling Co. v. State, 228 So.2d 475 (1969). That rule applies, however, only if the exemption statute is ambiguous. Section 40-9-12 is not ambiguous. It exempts all community chests and united appeal funds, and all charitable or civic organizations for whom they solicit funds. The Petitioner is a charitable or civic organization, and the Combined Federal Campaign is a community chest and/or a united appeal fund that solicits funds for the Petitioner. The Petitioner is thus exempt pursuant to ' 40-9-12(a).

The Department is directed to issue a sales and use tax exemption certificate to the Petitioner.

This Final Order may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, ' 40-2A-9(g).

Entered October 26, 1999.