



February 16, 2010

Nancy Vail, Assessor  
Board of Assessors  
300 Main St.  
Wellfleet, MA 02667

Re: Tax Status of Certain Property in Wellfleet  
Our File No. 2009-1076

Dear Ms. Vail:

You inquired whether four properties in Wellfleet qualify for the property tax exemption provided by G.L. c. 59, §5, clause third. That provision allows an exemption from property tax assessment for real estate owned and occupied for charitable purposes.

The Commissioner of Revenue does not determine the status of property for local tax purposes. Property taxes in Massachusetts are assessed and collected by cities and towns, not by the state. Therefore, the Board of Assessors of the town of Wellfleet, as the local tax administrator, has the sole power to determine whether the real property at issue is taxable or exempt. However, since the process for determining whether specific activities qualify as charitable requires careful consideration of judicial decisions and applicable laws, we can assist by offering some comments about the application of local property taxes to the properties you referred to in your letter.

Determining whether an entity is a charitable organization within the scope of G.L. c. 59, §5, cl. Third essentially is a 3-step process. First, you need to determine whether the organizational requirements for recognition as a charitable organization have been met. That is, does the entity fall within the categories of literary, benevolent, charitable or scientific institutions or temperance societies and is it organized as a corporation or trust? Secondly, you need to determine whether the operational requirements for recognition as a charitable organization have been met. That is, what are the dominant purposes and actual activities of the organization and does it provide a public benefit? And, third, you need to determine whether the ownership and occupancy requirements have been met. That is, is the real property owned by or held in trust for the charitable organization and is it occupied and used by the charitable organization or by another charitable organization for charitable purposes?

A fairly recent case examined the operational requirements in some depth. In *New Habitat, Inc. v. Tax Collector of Cambridge*, 451 Mass. 729 (2008), the Supreme Judicial

Court (“SJC”) decided that more leeway in meeting exemption standards should be granted to entities which undertake “traditionally charitable” purposes. Therefore, if the dominant purposes and methods of an organization are traditionally charitable ones, other factors typically looked at in charitable exemption cases, such as fees and the number of beneficiaries, will be less important.

In the *New Habitat* case, the SJC considered a definition of “charity” that suggests that traditionally charitable activities likely would fall within the broad categories of (1) the relief of poverty; (2) the advancement of knowledge or education; (3) the advancement of religion; (4) the promotion of health; (5) governmental or municipal purposes; and (6) attending to other social, vocational, spiritual, and/or educational needs that are beneficial to the community. Since these activities characterize the traditional objects and methods of charity, it is assumed that an entity undertaking “traditionally charitable” purposes is providing a public benefit. Therefore, the so-called community benefit test factors, such as the number of individuals receiving services, whether those individuals are from diverse walks of life, the fees charged to those individuals, and the relationship between the service fees and the cost of those services to the provider, play a less significant role. *See Mary Ann Morse Healthcare Corp. v. Board of Assessors of Framingham*, 74 Mass. App. Ct. 701, 703-04 (2009).

Against this background, we offer the following comments to assist you in determining whether the organizations you are questioning meet the organizational, operational, ownership and occupancy requirements for recognition as charitable organizations in order to qualify for property tax exemptions under G.L. c. 59, §5, clause Third:

(1) In the case of Preservation Hall, Wellfleet Preservation Hall, Inc. (WPH), a not-for-profit group, owns an historic building and leases from the town the land on which the building sits. WPH plans to renovate the building into a year-round cultural center that will provide a venue for civic, educational, social and creative arts events. You indicated that WPH has used the land for fundraising events, but the building is unoccupied.

WPH is a Chapter 180 corporation whose purpose is to raise funds to renovate an historic building. The maintenance and improvement of public recreational facilities is generally accepted as a traditionally charitable purpose. *See Assessors of Quincy v. Cunningham Foundation*, 305 Mass. 411 (1940); *Town of Norwood v. Norwood Civic Association*, 340 Mass. 518, 524-25 (1960); *Town of Milton v. Ladd*, 348 Mass. 762 (1965). In this case, that concept would likely extend to WPH even though it owns the facility being improved because WPH is assisting the municipal government and conferring a benefit upon the entire community in raising funds to renovate Preservation Hall. Further, since WPH is providing a public benefit, there is less need to examine the community benefit test factors.<sup>1</sup> Therefore, WPH appears to have met both the

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<sup>1</sup> Also, there is no indication here that WPH charges fees or imposes any limitations or restrictions that would affect the class of potential beneficiaries.

organizational and operational requirements for recognition as a charitable organization. The question is whether it meets the occupancy requirement.

If a lessee of publicly owned land qualifies as a charity for property tax purposes, the portion of the premises it occupies and uses for charitable purposes is exempt.<sup>2</sup> Here, although WPH has not yet succeeded in raising sufficient funds to renovate the building, it has been using the surrounding land for fundraising events which is a legitimate function of a charitable organization. See *Board of Assessors of Boston v. The Vincent Club*, 351 Mass. 10, 13-14 (1966); see also *Bridgewater State College Foundation v. Assessors of Bridgewater*, (ATB docket #F287957-F287962; F293903-F293905; and F294589-F294591, 2010). The fundraising also is evidence of WPH's intent to "remove to" the building for purposes which would satisfy the occupancy and use requirements.<sup>3</sup> However, since the 2-year grace period expires in March of 2010, and the building remains unoccupied, there is a legitimate question whether the use and occupation of the property as a whole will meet the statutory requirements after the 2010 fiscal year.

While the use and occupation of property for charitable purposes means something more than mere ownership and possession, it does not have to be intensive. See *Babcock v. Leopold Morse Home*, 225 Mass. 418, 421-22 (1917). In fact, the courts and the Appellate Tax Board ("ATB") have granted a good deal of latitude on the extent of use so long as the nature of the use and occupation promotes the charity. See e.g., *Assessors of Dover v. Dominican Fathers Province of St. Joseph*, 334 Mass. 530, 540-41 (1956); *The Trustees of Reservations v. Board of Assessors of the Town of Windsor*, (ATB docket #159046, 1991); see also *Trustees of Boston College v. Assessors of Boston*, (ATB docket #F278832; F278833; F284965; and F288657, 2010). In other words, so long as there is a good faith intention and effort on the part of the organization to use the property in a manner that is consistent with its charitable purposes, the occupancy requirement should be satisfied.

Keeping these principles in mind, the Wellfleet Board of Assessors must determine whether the nature of the use and occupation by WPH of Preservation Hall and the surrounding land is substantial enough that the property could be considered dedicated to charitable purposes. To the extent that WPH disagrees with any determination made by the assessors, it may appeal to the Board of Assessors and the ATB, if necessary.

(2) Gestalt International Studies, Ltd. ("Gestalt") is a Delaware non-profit organization that owns a study center in Wellfleet at which it offers advanced professional training for leaders, consultants, coaches and therapists. You indicated that Gestalt does not advertise locally for its training programs and does not hold public events at the study center. Further, it charges fees for its training programs and rents out the study center for private events.

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<sup>2</sup> G.L. c. 59, §2B; G.L. c. 59, §5, cl. 3.

<sup>3</sup> G.L. c. 59, §5, cl. 3 contains a 2-year removal provision which exempts from tax real estate purchased by a charitable organization for future use within 2 years. The 2-year period, if applicable, commences on the date of purchase.

The advancement of education is generally accepted as a traditionally charitable purpose. *See Assessors of Boston v. Garland School of Home Making*, 296 Mass. 378, 386 (1937); *Cumington School of the Arts, Inc. v. Assessors of Cumington*, 373 Mass. 597, 603-06 (1977). Several cases have recognized an organization's entitlement to the charitable exemption even where the education given was not strictly literary or scientific. *See e.g., Newton Centre Woman's Club, Inc. v. City of Newton*, 258 Mass. 326, 330-31 (1927); *Assessors of Lancaster v. Perkins School*, 323 Mass. 418 (1948). In this case, therefore, it would be important to determine whether Gestalt's dominant activities and methods involve a form of education or whether it is merely furnishing a facility for summer vacations with incidental educational components. Further, since Gestalt was organized under Delaware law and is not listed in the Massachusetts' Secretary of State's database as a nonprofit corporation or trust, it would be important to determine whether Gestalt meets the jural status component of the organizational requirement. *See RCN-BecoCom, LLC v. Commissioner of Revenue*, 443 Mass. 198, 207 (2005); *see also CFM Buckley/North LLC v. Board of Assessors of Greenfield*, 453 Mass. 404 (2009).

As for the operational requirement, if Gestalt's dominant purposes and methods *are* educational, and thus traditionally charitable, ones, the other factors typically looked at in charitable exemption cases, such as fees and the number of beneficiaries, are less important. *See New Habitat, Inc.* 451 Mass. at 734-35. However, these factors should still be examined and weighed to make certain that the fees charged, any restrictions imposed, and the number of beneficiaries do not render Gestalt uncharitable. *Id.* at 733-37. They should help to advance Gestalt's charitable purposes rather than limit access and the potential pool of beneficiaries. *See Straight Ahead Ministries, Inc. v. Assessors of Hubbardston*, (ATB docket #F293888, 2009).

As for the ownership and occupancy requirement, if Gestalt's dominant purposes and methods *are* predominantly educational, then it seems clear that the study center it owns is occupied and used for charitable purposes. However, as indicated above, the nature of the use and occupation of the property must promote the charity. Since the study center also is available for rent to private parties, it would be important to evaluate its use for educational purposes against any social, commercial, or other non-charitable uses made of the facility.

Keeping these principles in mind, the Wellfleet Board of Assessors must determine whether Gestalt meets the formal requirements for recognition as a charitable organization and whether its use and occupation of the study center is substantial enough that the property could be considered dedicated to charitable purposes. To the extent that Gestalt disagrees with any determination made by assessors, it may appeal to the Board of Assessors and the ATB, if necessary.

(3) Wellfleet Conservation Trust ("WCT") is a trust established in 1984. Its website indicates that it promotes the preservation of natural resources and rural character of the town of Wellfleet by acquiring land, acting as steward for its protection, developing walking trails and encouraging the study and implementation of sound environmental practices. You indicated that several of the Trust's parcels are landlocked and the public is not informed

about nor invited onto the land. In addition, the Trust's only public outreach is a once-a-year walk and a newsletter.

Property owned by a trust for charitable purposes is eligible for the charitable exemption provided that it is also occupied for charitable purposes. *See CFM Buckley/North, LLC*, 453 Mass. at 411 (2009). Protecting the environment, however, cannot clearly be categorized as a *traditionally* charitable purpose. Nonetheless, it is, in a sense, advancing education and science and benefiting the public in a manner that could be considered charitable. *Trustees of Reservation v. Board of Assessors of Windsor* (ATB docket #159046, 1991); *Assessors of Quincy v. Cunningham Foundation*, 305 Mass. 411 (1940); *Town of Milton v. Ladd*, 348 Mass. 762 (1965). Therefore, an organization like WCT could be considered to be engaged in benevolent or charitable work. In addition, the Supreme Judicial Court has held that "[s]ome aspects of recreation have been recognized as appropriate purposes of a charitable trust, particularly when made generally available to the whole public of a community or a large segment of the community." *Staman v. Assessors of Chatham*, 351 Mass. 479, 483-84 (1966); *see also Town of Norwood*, 340 Mass. at 524-25. Therefore, while WCT probably meets the organizational requirement for recognition as a charitable organization, the question still remains whether it meets the operational and occupancy requirements.

Since WCT's dominant purposes and activities are not traditionally charitable ones, the other factors typically looked at in charitable exemption cases, such as the number of beneficiaries, are of more significance. Simply owning land and allowing its natural habitat to flourish is not sufficiently charitable. *Nature Preserve, Inc. v. Board of Assessors of Pembroke* (ATB docket #F246663, 2000). If WCT holds parcels in a closed manner which primarily benefits only the contiguous property owners, then there has not been any active appropriation of the properties to achieve a public benefit. *See Brookline Conservation Land Trust v. Assessors of Brookline*, (ATB docket #281854-56; 285517-19, 2008); *Forges Farm, Inc. v. Assessors of Plymouth*, (ATB docket #F283127-129, 2007); *Wing's Neck Conservation Foundation, Inc. v. Board of Assessors of Bourne*, 61 Mass. App. Ct. 1112 (2004). Further, if the occupation and use by the public is not substantial enough that the property can be considered dedicated to charitable purposes, the occupancy requirement will not have been met.

Keeping these principles in mind, the Wellfleet Board of Assessors must determine whether WCT meets the formal requirements for recognition as a charitable organization and whether its use and occupation of its properties is substantial enough that the properties can be considered dedicated to charitable purposes. To the extent that WCT disagrees with any determination made by assessors, it may appeal to the Board of Assessors and the ATB, if necessary.

(4) In the case of Wellfleet Harbor Actors Theater, Inc. ("WHAT"), it is a non-profit, artist-run theater group that operates two theater facilities in Wellfleet. You indicated that WHAT also has gallery space where local artists not affiliated with WHAT display and sell their work. You also indicated that WHAT advertises its theater facilities as available for rent to private parties.

WHAT is a Massachusetts Chapter 180 corporation whose mission is to advance and preserve the art of the theater for the education and appreciation of the public. In 2004, you requested our opinion regarding the tax status of a single-family home owned by WHAT and a new theater that WHAT intended to construct on land leased from a for-profit corporation. At that time, we advised that it seemed likely that WHAT's dominant purposes and actual activities would be considered charitable in nature. (See enclosed File No. 2004-444.) As for the single family house used to provide housing to visiting actors and interns, we advised you to evaluate that use against any social, commercial, or other non-charitable uses that WHAT also made of the property. As for theater-to-be, we advised that the property must be *owned by or held in trust for* a charitable corporation in order to be exempt under G.L. c. 59, §5, clause third. We assume now that the theater facilities have been built or bought and are *owned by or held in trust for* WHAT. We also assume that the gallery space is contained in one of the theater facilities.

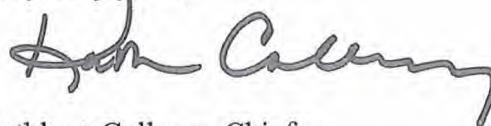
Preserving the art of theater cannot clearly be categorized as a *traditionally* charitable purpose. However, like protecting the environment, it does fulfill a general purpose of advancing education and culture and benefiting the public. *See Assessors of Boston v. World Wide Broadcasting Foundation*, 317 Mass. 598 (1945); *see also Boston Symphony Orchestra, Inc. v. Board of Assessors of Boston*, 294 Mass. 248, 255 (1936). Therefore, since WHAT is a corporation, it most likely meets the organizational requirement for recognition as a charitable organization. The question is whether it meets the operational and occupancy requirements.

Since WHAT's dominant purposes and activities are not traditionally charitable ones, the other factors typically looked at in charitable exemption cases, such as fees and the number of beneficiaries, are of more significance. Therefore, you must determine whether WHAT passes the community benefit test. *See Mary Ann Morse Healthcare Corp.*, 74 Mass. App. Ct. at 703-04. That is, you must examine and weigh the number of individuals receiving services, whether they are from diverse walks of life, the fees charged to those individuals, and the relationship between the service fees and the cost of those services to the provider in order to determine if these factors help to advance WHAT's charitable purposes or render it uncharitable. *Id.* Further, you must determine that the occupation and use of the theater facilities is substantial enough that they can be considered dedicated to WHAT's charitable purposes. Since the theater facilities contain gallery space and are available for rent to private parties, it would also be important to evaluate their use for educational and cultural purposes against any social, commercial or other non-charitable uses made of them.

Keeping these principles in mind, the Wellfleet Board of Assessors must determine whether WHAT meets the formal requirements for recognition as a charitable organization and whether the nature of the use and occupation by WHAT of its theaters is substantial enough that they can be considered dedicated to charitable purposes. To the extent that WHAT disagrees with any determination made by assessors, it may appeal to the Board of Assessors and the ATB, if necessary.

We hope that this information is helpful. Please feel free to contact us again if you need any further assistance.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Kathleen Colleary".

Kathleen Colleary, Chief  
Bureau of Municipal Finance Law

KC/mcm

Enclosure (1)