

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of :

HOMSITE HOLDING CO., INC. :

for Redetermination of Exempt Organization
Status under Articles 28 and 29 of the Tax Law.

DECISION

In the Matter of the Petition

of :

CAYUGA DEVELOPMENTS, INC.

for Redetermination of Exempt Organization
Status under Articles 28 and 29 of the Tax Law.

Petitioner, Homsite Holding Co., Inc., 60 Clark Street, Auburn, New York 13021, filed a petition for redetermination of exempt organization status under Articles 28 and 29 of the Tax Law (File No. 64575).

Petitioner, Cayuga Developments, Inc., 60 Clark Street, Auburn, New York 13021, filed a petition for redetermination of exempt organization status under Articles 28 and 29 of the Tax Law (File No. 65715).

A consolidated hearing was held before Timothy J. Alston, Hearing Officer, at the offices of the State Tax Commission, 333 East Washington Street, Syracuse, New York, on July 11, 1986 at 9:00 A.M. Petitioners appeared by Cohen & Cannon, Esqs. (Alaine T. Espenscheid, Esq., of counsel). The Audit Division appeared by John P. Dugan, Esq. (James Della Porta, Esq., of counsel).

ISSUE

Whether the Audit Division properly denied the applications of Homsite Holding Co., Inc. and Cayuga Developments, Inc., for exempt organization status under section 1116(a)(4) of the Tax Law.

FINDINGS OF FACT

1. By applications dated May 22, 1985 and July 9, 1985, respectively, **the** petitioners, Homsite Holding **Co.**, Inc. and Cayuga Developments, Inc., **each** submitted to the Audit Division an Application for An Exempt Organization Certificate seeking exemption from sales and use taxes under section 1116(a)(4) of the Tax Law. In their respective applications, each petitioner sought exemption under the relevant statute as a charitable organization.

2. By letter dated August 1, 1985, the Audit Division informed petitioner Homsite Holding **Co.**, Inc. that it had failed to qualify for exemption from sales and use taxes. By letter dated October 15, 1985 the Audit Division informed petitioner Cayuga Developments, Inc. that it also had failed to qualify for exemption. Based upon an analysis of the information and documentation submitted by each petitioner in support of its application, the Audit Division concluded that neither petitioner was organized or operated exclusively for charitable purposes and therefore denied each petitioner's application.

3. Petitioners are related not-for-profit corporations with identical boards of directors and officers. The two are similarly related to a third corporation, Homsite Development Corporation. Together, the three corporations operate on a daily basis, for all practical purposes, as a single, integrated organization. Homsite Development Corporation has been granted exempt organization status pursuant to section 1116(a)(4) of the Tax Law.

4. Petitioner Homsite Holding Co., Inc. was incorporated as a New York not-for-profit corporation on March 29, 1984. Its Certificate of Incorporation expressly empowers the corporation as follows:

"Pursuant to the powers granted Corporations under the laws of the State of New York, the Corporation shall have the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt under Section 501 of the Internal Revenue Code, and pursuant to such purpose the Corporation shall have the power and authority to:

(a) Take, accept, hold and acquire by bequest, devise, gift, purchase, loan or lease any property, real, personal or mixed, whether tangible or intangible, without limitation as to kind, amount or value.

(b) Sell, convey, lease, or make loans, grants or pledges of any such property, or any interest therein or proceeds therefrom, and to invest and reinvest the principal thereof and receipts therefrom, if any.

(c) Borrow money upon and pledge or mortgage any such property for any purpose for which it is organized, and to issue notes, bonds or other forms of indebtedness to secure any of its obligations.

(d) Hold, improve by construction or otherwise, develop, clear, prepare and dispose of real property.

(e) Carry on any of the aforesaid activities or purposes either directly, or as agent for or with other persons, associations or corporations.

(f) Carry on any activity and to deal with and expend any such property or income therefrom for any of the aforesaid purposes without limitation, except such limitations, if any, as may be contained in the instrument under which such property is received, the Certificate of Incorporation, the By-Laws of the corporation, or any other limitations as are prescribed by law, provided that no such activity shall be such as is not permitted by a corporation exempt from Federal Income Tax under section 501(c)(2) of the Internal Revenue Code of 1954, as amended, or any corresponding future provision of said Code."

5. Homsite Holding's Certificate of Incorporation provides the following with respect to the corporation's dissolution:

"Upon the dissolution or other termination of the corporation, no part of the property of the corporation or any of the proceeds shall be distributed to or inure to the benefit of any of the members of the corporation, but all such property and proceeds, subject to the discharge of valid obligations of the corporation, and to the applicable provisions of the Not-for-Profit Corporation Law, shall be distributed as directed by the members of the corporations among one or more corporations, trusts, community chests, funds or foundations organized and operated exclusively for religious, charitable, scientific, literary or educational purposes, no part of the net earnings of which inure to the benefit of any private shareholder, member or individual, and no substantial part **of** whose activities consist of carrying on propaganda or otherwise attempting to influence legislation or which does not participate or intervene in any ~~political~~ campaign **on** behalf of any candidate or public office, or to other entities of the type which qualify for Federal Income Tax Exemption under Section 501(c)(3) **of** the Internal Revenue Code of 1954, as amended."

6. Since its inception, Homsite Holding's sole activity has been as holder of title to property, located at 60 Clark Street, Auburn, New York, housing the offices of the three related corporations and a nine-unit shared-living facility for women. The women occupying this facility are low-income individuals paying to Homsite Holding their welfare shelter allowances as rental payments. Homsite Holding does not collect rent from its sister corporations for their office space. Homsite Holding has not engaged in any other activity since its inception.

7. Homsite Holding **Co., Inc.**, is exempt from Federal income tax under the provisions of Section **501(c)(2)** of the Internal Revenue Code.

8. Petitioner Cayuga Developments, Inc., was incorporated as a New York not-for-profit corporation on January 26, 1984. Its Certificate of Incorporation provides the following as this corporation's purposes:

"A. **To** promote the common good and general welfare by bringing about civic betterments and social improvements, improving housing stock, promoting neighborhood redevelopment,

including business location and stimulating economic development and business recovery within the area to be served by the corporation.

B. To plan, construct, operate, maintain, improve, preserve, repair and upgrade housing and relating [sic] facilities and services for persons of low or moderate income.

C. To engage in housing preservation and community renewal activities pursuant to Article XVII of the New York Private Housing Finance Law or pursuant to any other similar legislation or regulation.

D. To manage, for a fee, housing units constructed, renovated or rehabilitated pursuant to the corporation's purposes.

E. To serve as an eligible sponsor under the Rental Assistance Program for Rural Areas pursuant to Article XVII-A of the New York Private Housing Finance Law or pursuant to any other similar legislation or regulation.

F. To secure and disseminate information to the public regarding the needs for civic betterments, social improvements, improved housing stock, neighborhood redevelopment, business economic development and business recovery within the area to be served by the corporation.

G. To plan, carry out and support shared housing programs and activities and similar programs and activities for the purpose of alleviating housing problems and needs of elderly persons and of persons of lower [sic] moderate income."

9. Additionally, the Certificate of Incorporation specifically enumerates the following powers to be exercised by Cayuga Development:

"A. To acquire by gift or purchase, hold, sell, convey, assign, mortgage or lease any property, real or personal, necessary or incidental to the furtherance of any or all of the objects of its business; and to invest and reinvest any principal and to deal with and expand the income and principal of the corporation in such manner as in the judgment of the members and directors will best promote its objectives.

B. To borrow money and issue evidence of indebtedness in furtherance of any or all of the objects of its business; and to secure loans by mortgage, deed of trust, pledge or other lien.

C. To apply for, obtain and contract with any Federal, State or local government agency for a direct loan or loans or other financial aid in the form of mortgage insurance or otherwise in furtherance of any or all of the objects of its business.

D. To seek, acquire and administer funds from any private or public source, to engage in any kind of activity, and to enter into, perform, and carry out contracts of any kind, necessary or in connection with, or incidental to the accomplishment of any one or more of the non-profit purposes of the corporation.

E. To encourage and cooperate with municipalities and local governments of every kind and nature, community groups and agencies, other non-profit corporations including religious corporations engaged or interested in securing housing and related facilities and services for persons of low or moderate income.

F. To encourage and cooperate with individuals, groups, corporations, or other entities engaged in or interested in providing housing and related facilities and services for persons of low or moderate income.

G. To enter into joint ventures with such individuals, groups, corporations, municipalities and other agencies for the purpose of providing housing and related facilities and services for persons of low or moderate income.

H. To solicit and receive grants, bequests and contributions for the corporate purposes of the corporation.

I. To do any other act or thing incidental to or connected with the corporate purposes of the corporation or in advancement thereof, but not for the pecuniary of [sic] financial gain of its members, directors or officers.

J. In pursuance of and not in limitations of the general powers conferred by law, and the objects and purposes herein set forth, it is expressly provided that this corporation shall also have the power to do all such acts as are necessary or convenient to attain the objects and purposes herein set forth, to the same extent and as fully as any natural person could or might do, and as are not forbidden by law or by this Certificate of Incorporation or by the by-laws of this corporation."

10. Cayuga Developements' Certificate of Incorporation provides the following with respect to the corporation's dissolution:

"In the event of dissolution, all of the remaining assets in the property of the corporation shall, after

necessary expenses thereof, be distributed to such organizations as shall qualify under Section 501(c)(3) or Section 501(c)(4) of the Internal Revenue Code of 1954, as amended, subject to an order of the Justice of the Supreme Court of the State of New York."

11. Cayuga Developments, Inc., is a Rural Preservation Company and as such administers housing programs funded through grants, from both State and Federal housing programs. The eligibility of individuals for the respective programs is, of course, determined by the specifics of each program. Included among the housing programs administered by Cayuga Developments are over 200 units of "Section 8" existing housing (referring to Section 8 of the Housing Act of 1949) and over 100 units of Section 8 moderate rehabilitation housing. Both of these programs are federally funded and are designed to aid low and moderate income families. Cayuga Developments has also been involved in the development of approximately 80 housing units for elderly persons. Eligibility to reside in these units is determined by Farmers Home Administration guidelines. Nearly all of the elderly residents receive State rental assistance. Cayuga Developments is not involved in the management of the elderly persons projects.

12. Cayuga Developments also provides housing-related counselling services to low and moderate income families, including the packaging of Farmer's Home Administration loan and grant applications at no cost for eligible low and moderate income applicants. Cayuga Developments is also a HUD-certified counselling agency, providing budget, credit, and pre-purchase counselling as well as mortgage default counselling. Cayuga also operates a Shared Housing Program which attempts to match older persons living alone with other elderly persons who need homes. Additionally, Cayuga operates a Security Deposit Loan Fund which provides loans at no interest to persons of low income. Cayuga also subcontracts with the Cayuga County Office for the Aging providing five job

positions on its staff to low income elderly persons. Cayuga **is** also the recipient of a State grant to rehabilitate homes for lower and moderate income persons and **to** build new units to be sold **to** low and moderate income families eligible under the program.

13. Cayuga Developments, Inc. is exempt from federal income tax under the provisions of section 501(c)(4) of the Internal Revenue Code.

CONCLUSIONS OF LAW

A. That Tax Law § 1116(a)(4) provides an exemption from the sales and compensating use taxes imposed under Article 28 to "[a]ny corporation, association, trust, **or** community chest, fund or foundation organized and operated **exclusively for** religious, charitable, scientific, testing for public safety, literary or educational purposes, or to foster national or international amateur sports competition". In ascertaining whether an organization is organized exclusively for one or more of the enumerated exempt purposes, the focus **is** on the provisions of the organizing documents. The documents must limit the purposes of the organization to one or more exempt purposes and cannot expressly empower the organization to participate, other than as an insubstantial part **of** its activities, in activities which are not in furtherance **of** one or more exempt purposes (20 NYCRR 529.7[c][1][1]). On the other hand, in determining whether the organization is operated exclusively for one or more exempt purposes, the focus **is** on the organization's activities. Nearly all of its activities must accomplish one or more exempt purposes; or stated in a different way, an organization will not be regarded as exempt if more than an insubstantial part of its activities is not in furtherance **of** an exempt purpose (20 NYCRR 529.7[d][2]).

B. **That** 20 NYCRR 529.7(e)(1)(ii) defines the term "charitable" for purposes of section 1116(a)(4) of the Tax Law as follows:

"The term charitable includes: relief of the poor, distressed, or underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments, or works; lessening the burdens of government; and promotion of social welfare by organizations designed to accomplish any of the above purposes, or to lessen neighborhood tensions; to eliminate prejudice and discrimination; to defend human and civil rights secured by law; or to combat community deterioration and juvenile delinquency. The fact that an organization which is organized and operated for the relief of indigent persons may receive voluntary contributions from the persons intended to be relieved will not necessarily prevent such organization from being exempt as an organization organized and operated exclusively for charitable purposes. The fact that an organization, in carrying out its primary purpose, advocates social or civic changes or presents opinion on controversial issues with the intention of molding public opinion or creating public sentiment to an acceptance of its views does not preclude such organization from qualifying for exemption under section 1116(a)(4) of the Tax Law, **so** long as it is not an 'action' organization of any type described in subdivision (d) of this section."

C. That petitioner Homsite Holding, Co., Inc.'s Certificate of Incorporation does not meet the requirements of the organizational test. As set forth herein in Finding of Fact "4", Homsite's "exclusive purpose" is in **no** way charitable; Homsite Holding is a real estate holding company. Section 1116(a)(4) of the Tax Law makes no provision for an exemption for a holding company, notwithstanding any requirements in Homsite Holding's Certificate of Incorporation that all income derived from its properties be turned over to an organization exempt under section 501 of the Internal Revenue Code.

D. That petitioner Homsite Holding's activities likewise fail to meet the requirements of the operational test. Homsite Holding's activities are consistent with its organizational documents; that is, this petitioner operates as a real estate holding company. Such an activity is not charitable within the meaning of the relevant regulations, again notwithstanding the fact that Homsite turns all income derived from its property over to Cayuga Developments, Inc. and

Homsite Development Corporation. Section 1116(a)(4) does not provide for any exemption from sales tax for a real estate holding company, nor does Article 28 of the Tax Law provide for an exemption from sales tax similar to the exemption set forth in section 501(c)(2) of the Internal Revenue Code.

E. That petitioner Cayuga Developments, Inc.'s Certificate of Incorporation fails to sufficiently circumscribe the petitioner's activities to satisfy the organizational test. Specifically, the authorization to provide housing-related services to persons of moderate income (Finding of Fact "8(B)"), results in petitioner's failing the organizational test. This authorization, absent any restrictions, clearly allows this petitioner to engage in non-charitable activities. Additionally, inasmuch as petitioner's dissolution provisions provide for the possibility of the distribution of petitioner's assets to an entity exempt under Section 501(c)(4) of the Internal Revenue Code, such provisions likewise results in petitioner's failing the organizational text (20 NYCRR 529.7[c](B)).

F. That petitioner Cayuga Developments, Inc., has failed to show that it operates exclusively for charitable purposes. Many of Cayuga Development's programs (see Findings of Fact "11" and "12") provide benefits to persons of moderate income. What constitutes "low" or "moderate" income is a factual determination depending upon the facts in each case (see, e.g. Rev. Rul. 70-585, 1970-2 C.B.115). While the label "moderate" income does not necessarily preclude an organization from meeting the operational test requirements, petitioner must nonetheless establish that its activities in helping those of moderate income fall within the meaning of charitable as set forth in the regulations. Petitioner Cayuga Developments has failed to make such a showing herein.

G. That the petitions of Homesite Holding Co., Inc., and Cayuga Developments, Inc., are in all respects denied.

DATED: Albany, New York

STATE TAX COMMISSION

FEB 13 1987

Roderick W. Allen
PRESIDENT

Francis B. Koenig
COMMISSIONER

Mark J. [unclear]
COMMISSIONER