

HEBREW HOME OF GREATER *
WASHINGTON

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V.

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Case No. 15-TR-00-0290

MONTGOMERY COUNTY, MARYLAND *
DEPARTMENT OF FINANCE *

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MEMORANDUM OF GROUNDS FOR DECISION

This case arises from a written denial of a claim for refund of the Montgomery County transfer tax by the Treasury Division of the Montgomery County Department of Finance. Petitioner, Hebrew Home of Greater Washington, (Hebrew Home), claims that it is a charitable and religious corporation, and therefore entitled to an exemption from the County transfer tax. The County denies that the Petitioner is a nonprofit religious or charitable corporation for purposes of the County’s exemption from transfer tax, and is not entitled to an exemption from County transfer tax under the County Code.

Section 52-24 of the County Code states that “[a] transfer of any interest in property is not subject to tax if the property is transferred...to any nonprofit hospital or nonprofit religious or charitable organization, association or corporation.” Maryland relies on a four-factor test to determine whether an organization is “charitable.” Those four factors are “the stated purposes of the organization, the actual work performed, the extent to which the work performed benefits the community and the public welfare in general, and the support provided

by donations." *State Dept. of Assessments and Taxation v. North Baltimore Ctr., Inc.*, 129 Md. App. 588, 743 A.2d 759 (2000).

Mr. Warren Slavin, Chief Executive Officer of the Hebrew Home, testified as to the history of the Hebrew Home and the growth of its services in Montgomery County. In 1916, the founders of the current Hebrew Home incorporated under the laws of the District of Columbia and purchased a small DC property to provide room, kosher food, and a religious atmosphere for its residents in a protected environment. The founders were committed to providing such care for Jewish elders to fulfill a crucial need, and to honor tenets of their Jewish faith and values. In 1924, a new nursing home called the Hebrew Home for the Aged was built on Spring Road in Washington, D.C. In 1942, the I.R.S. formally declared the Hebrew Home for the Aged to be a charitable entity exempt from federal income tax. In 1964, a philanthropist, along with other Jewish charitable entities purchased land on Montrose Road in Rockville as a center of Jewish life and Jewish charities in the greater Washington area. In 1969, the Hebrew Home for the Aged on Spring Road moved into a newly constructed state of the art nursing home in Rockville called Hebrew Home of Greater Washington. Over the years, Hebrew Home has added services and facilities that advance its vision of delivering a continuum of quality and innovative services for elders, their families and the community in one central location.

Hebrew Home receives payments from four primary sources for its nursing home resident care. The majority of reimbursement comes from Medicaid (57% in 2014, 56% in 2015) with additional payments from Medicare (25% in 2014 and

28% in 2015). In 2014, Medicaid, which reimburses for services at the lowest rate of the four services, represented 72% of care delivered to Hebrew Home nursing home residents. In 2015, Medicaid represented 71% of care delivered, but only 56% of resident revenue. Hebrew Home is the largest single provider of Medicaid services to nursing home residents in the State.

On its tax returns, Hebrew Home reported the following recent charitable contributions and grants: \$5,028,065 in 2012; \$2,879,380 in 2013; \$3,856,972 in 2014, and \$4,532,673 in 2015. The most recent consolidated financial statements reports Hebrew Home's long-term investments to be \$135,144,149 plus \$66,500 in current position for a total of \$135,210,649. These philanthropic donations allow Hebrew Home to bridge the gap between reimbursements and the cost of resident care. Prudent investment also endows a secure future for Hebrew Home residents because the millions that are donated and invested annually create a buffer against declining and uncertain reimbursement rates. The investments are also available to be continually reinvested in physical infrastructure and in services to ensure that Hebrew Home offers the highest quality of life for those it serves.

Hebrew Home also generously gives back to the entire community. Hebrew Home offers charity and uncompensated care to those residents unable to afford services and to those residents who receive subsidized senior housing. Hebrew Home provided \$3,064,000 of such charity and uncompensated care in 2012, \$2,877,000 in 2013, \$2,977,000 in 2014 and \$3,076,000 in 2015. Hebrew Home also offers extensive community outreach. It is a regular sponsor of educational programs, events, health fairs, expos, and symposia on topics that relate to seniors

and aging. These programs are open to the community at large, and are not targeted to Hebrew Home residents. Hebrew Home's community outreach engagement also includes an extensive volunteer program with a substantial number of hours served. In 2014, Hebrew Home estimated the total volunteer corps to be comprised of 780 people.

In 2014, Hebrew Home launched the ElderSAFE Center ("Center"). Ms. Tovah Kasdin, the director of the Center, testified that the Center is designed to provide safe temporary shelter for older adults who are being abused and neglected in the Washington Metro region. It also actively educates professionals, service providers, and the community at large to build public awareness of elder abuse. The Center offers a language accessible help line for referrals to the program. The Center also translated its brochures into Spanish, French, Russian, Amharic, Mandarin, Korean, and Vietnamese which are available to the public in hard copy and at eldersafe.org

The Center accepts referrals and works with a community coalition that includes Montgomery County adult protective services, Montgomery County Department of Health and Human Services, Montgomery County Police-Elder Abuse Unit, Montgomery County State's Attorney's Office and the Catholic Charities. The Center has provided elder abuse victims shelter and refuge at the Hebrew Home. These victims are sheltered at Hebrew Home regardless of their ability to pay. The Center has also made hundreds of referrals and has sponsored multiple community programs. Montgomery County and the State of Maryland have provided grants in support of the Center. The Center furthers Hebrew Home's mission and is an exemplar of how Jewish values are central to its mission.

Mr. Slavin testified that Hebrew Home accepts persons of all faiths. Currently, about 90% of the residents in the affiliate apartments are Jewish and about 55% of the residents in the nursing facility are Jewish. The food served and prepared at Hebrew Home is kosher; kosher meals are also served in the Ring, Landow, and Revitz House. Providing kosher food requires a rabbi to be present in all six kitchens across campus to certify that the food is being purchased, prepared and served in a kosher fashion in accordance with the strict requirements of Jewish faith.

Mr. Slavin further testified that Hebrew Home observes the Sabbath and offers rabbi-led services in person. Many Sabbath customs are followed and Sabbath foods and drink are offered. Additionally, a mezuzah is placed on the doorpost of every resident's room. A mezuzah being placed on each doorpost is in fulfillment of Jewish values and biblical commandment. Hebrew Home thus advances its mission through Jewish values, which permeate the care and services it offers thousands in the community at large. Many of the recipients of such care and services are of limited means and assets. Further, as one can imagine, Hebrew Home's operations result in significant overhead costs. Hence, in order to provide care and services, Hebrew Home relies heavily on charitable donations from donors.

Mr. Slavin's testimony continued with the property known as the Dekelboum Building. In November 2014, Hebrew Home purchased real property, known as the Dekelboum Building, from the Greater Washington Jewish Federation for \$2,000,000. The purchase was made possible through a charitable donation from a donor. The Dekelboum Building houses the ElderSAFE Center, contains classrooms at which health education courses are offered to Hebrew Home staff and to the

community, and consolidates Hebrew Home business office functions. Excess space is leased to two Jewish charitable organizations and to a grassroots organization that promotes the wellbeing of seniors. The Dekelboum Building parcel has been exempt from County and State property taxes for decades and continues to be exempt after the transfer.

Donations are fundamental to the continuing success and existence of the Hebrew Home. An overwhelming number of residents have less than \$1,500 in assets. As such, they cannot afford the costs of the care and services that Hebrew Home provides. The subsidies, donations, and prudent investment of donations allows Hebrew Home to provide services and care to residents who cannot on their own right afford the services and care. Mr. Slavin testified that Hebrew Home's investment portfolio is necessary to ensure that Hebrew Home can cater to and provide the same level of services despite changes in health care reimbursements from insurance programs.

In the present case, the Respondent County denies that the Petitioner is a nonprofit religious or charitable corporation for purposes of the Count's exemption from transfer tax, and is not entitled to an exemption from County transfer tax under the County Code. We disagree with the Respondent's proposed standard of determining whether an organization is "charitable" and find that the Petitioner meets the Maryland four-factor test that determines whether an organization is "charitable."

We also disagree with the Respondent's analysis of Petitioner's finances as a factor in determining whether an organization is charitable. The Respondent

attempted to paint the financial status of the organization as being one of the dispositive factors as to whether Hebrew Home is "charitable." One of the main arguments presented by the Respondent was that the organization operated at a surplus and thus could not be charitable due to the fact that the majority of the surplus was reinvested.

What the Respondent failed to adequately consider is that the Hebrew Home's investments serve as a safety net. Testimony during the trial demonstrated that the status of insurance reimbursement payments are not definite. Further, it was testified to that many of the recipients of Hebrew Home's services and care are in no position to pay for it themselves. Hebrew Home's success in investing charitable donations to provide for future services and care should not be used against it, but rather lauded. These investments serve to assure that Hebrew Home can provide its care and services for years to come.

For the above reasons, the Court shall pass an Order granting the Petitioner's refund claim in the amount of \$20,000 for the transfer tax paid in tax year 2014.

HEBREW HOME OF GREATER
WASHINGTON

vs.

MONTGOMERY COUNTY, MARYLAND
DEPARTMENT OF FINANCE

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IN THE
MARYLAND TAX COURT
No. 15-TR-OO-0290

ORDER

The above entitled case having come on for hearing, testimony having been taken and the matter considered, it is this *2nd* day of *March*, 2017, by the Maryland Tax Court ORDERED, that the decision of the Respondent in denying the claim for refund of Montgomery County transfer tax is hereby **REVERSED**, as explained in this Court's Memorandum of Ground for Decision.

cc: Diane Festino Schmitt, Esq.
Scott R. Foncannon, Esq.
Taggard Hutchinson, Esq.

CERTIFIED TRUE COPY
TEST: John T. Hearn, Clerk

NOTICE: You have the right of appeal from the above Order to the Circuit Court of any County or Baltimore City, wherein the property or subject of the assessment may be situated. The Petition for Judicial Review **MUST** be filed in the proper Court within thirty (30) days from the date of the above Order of the Maryland Tax Court. Please refer to Rule 7-200 et seq. of the Maryland Rules of Court, which can be found in most public libraries.