

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	DECISION
THE JESUS REVIVALS, INC.	:	
	:	
for Redetermination of Exempt Organization	:	
Status under Articles 28 and 29 of the	:	
Tax Law.	:	

Petitioner, The Jesus Revivals, Inc., Box 652, Watertown, New York 13601, filed a petition for redetermination of exempt organization status under Articles 28 and 29 of the Tax Law (File No. 43411).

A hearing was held before James J. Morris, Jr., Hearing Officer, at the offices of the State Tax Commission, 207 Genesee Street, Utica, New York on April 2, 1986 at 1:15 P.M. Petitioner appeared by Casey, Janas, Klyne, Mitchell and Amerling (Matthew J. Klyne, Esq. of counsel). The Audit Division appeared by John P. Dugan, Esq. (Deborah J. Dwyer, Esq., of counsel).

ISSUE

Whether the Audit Division properly denied petitioner's application for exempt organization status.

FINDINGS OF FACT

1. On or about March 22, 1982, petitioner, The Jesus Revivals, Inc., submitted to the Audit Division an Application for an Exempt Organization Certificate, seeking exemption from sales and compensating use taxes under Tax Law section 1116(a)(4).

2. By letter dated March 4, 1983, the Audit Division denied petitioner's application. Denial followed many months of correspondence between petitioner

and the Audit Division involving specific and detailed questions and answers concerning petitioner's organization and its operational methods.

3. The Audit Division's letter cited two grounds for its denial. First, status was denied because petitioner failed to meet the organizational test for exemption in that its organizing document did not prohibit distribution of its net earnings to the benefit of private shareholders or individuals; did not prohibit the organization from engaging in proscribed political activity; and did not dedicate the organization's assets upon dissolution solely to an exempt purpose. Second, the Audit Division determined that petitioner's earnings inured to the benefit of an individual, Harold R. Rounds, and thus, petitioner was not operated exclusively for an exempt purpose.

4. On March 24, 1981 petitioner was incorporated as a Type B corporation pursuant to section 201 of the Not-for-Profit Corporation Law. Its primary purpose as stated in its articles of incorporation is to "promote, develop and establish a place of worship for Christians seeking to renew their faith in God, and to provide guidance and direction to anyone seeking spiritual counsel and to provide a social forum for the mutual benefit of church members."

5. Petitioner's minister, Harold R. Rounds, and its assistant minister, Lawrence Hyde, are licensed through the United Christian International Ministerial Foundation. Each has performed sacerdotal functions including baptisms, funerals and marriages. Petitioner conducts regular religious services and bible study classes. It offers televised correspondence courses on religious subjects through the Word of Faith in Dallas, Texas. Four to five programs are conducted by petitioner each week, and attendance varies from ten to twenty people. In addition, the ministers teach bible studies in a nearby prison and visit local nursing homes and hospitals. Mr. Rounds works approximately 25

hours weekly on behalf of petitioner, and Mrs. Rounds works approximately 30 hours weekly. They receive no monetary compensation for their services. Mr. Hyde works 40 hours weekly for which he receives \$100.00 per week. In addition, petitioner's minister and assistant minister are provided with free housing.

6. Prior to its incorporation, Jesus Revivals operated as an association governed by a board of trustees consisting of Harold R. Rounds, Karen Brown (later Mrs. Rounds) and Michael E. Henderson. At petitioner's organizational meeting, the trustees were elected to petitioner's board of directors along with Beryl Jane Henderson, Mr. Henderson's wife. These individuals hold the offices of president, vice-president, secretary-treasurer and assistant secretary-treasurer respectively. Petitioner's only voting members are its directors, and their terms expire only upon resignation or dissolution of the corporation. To become a general member, an individual must participate in the organization for nine months, demonstrate an active interest in its programs and purposes and be elected to membership by a majority of the board of directors.

7. On August 19, 1980, Mr. Rounds and Mr. Henderson, as trustees for Jesus Revivals, acquired title to certain property for a purchase price of approximately \$15,000.00. The money for purchase of the property was provided by the trustees. Although Mr. Rounds has indicated that this property is now owned by petitioner, there is no evidence in the record to establish that title ever passed to petitioner at the time of or after its incorporation.

8. The property purchased by the trustees consists of a single acre of land and a two hundred year old building which previously served as a hotel, dancehall and bar. It had been vacant for a period of five to ten years and required extensive renovation and repair to make it usable as a church and living space for petitioner's ministers. Approximately \$30,000.00 was expended

for this purpose from the time of purchase through 1981. In order to pay for the renovations, the trustees utilized credit cards issued in Mr. Rounds's name.

9. At petitioner's organizational meeting, the board of directors passed a resolution requiring petitioner to make payments on four credit cards in the name of Harold R. Rounds which were used to pay for the renovations.

10. The church building is a large structure approximately one hundred feet by one hundred feet. It includes an auditorium on the ground floor which is capable of holding four hundred people. The second floor consists of two apartments. One apartment, occupied by Mr. and Mrs. Rounds, contains three bedrooms, two baths, a kitchen and a living room. The second apartment is occupied by the assistant minister and consists of three bedrooms, a bath and a combination living room and kitchen. An additional room exists which has been used occasionally to provide living quarters to persons in need of temporary shelter. The occupants of the building do not pay rent or contribute directly to the maintenance of the building.

11. In response to a request from the Department of Taxation and Finance (the "Department"), petitioner submitted two statements of its receipts and expenditures as follows:

<u>RECEIPTS</u>	<u>1/1/82-5/15/82</u>	<u>1/1/81-12/31/81</u>
Members Contributions	\$13,111.20	\$55,180.83
Fund Raising	70.50	---
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<u>TOTAL</u>	13,181.70	55,180.83
<u>EXPENDITURES</u>		
Merchandise and Materials	2,070.01	
Auto Expense	1,191.03	
Contributions	336.27	1,102.00

Advertising	231.72	
Electric	1,209.57	2,156.33
Heat	1,968.05	2,954.49
Insurance	287.24	1,891.52
Misc.	416.45	120.85
Office expenses	232.60	
Postage	13.00	
Repairs	474.96	6,125.19
Supplies	351.64	1,906.61
Telephone	973.06	1,618.89
Traveling expenses	55.87	814.65
Well	2,865.92	1,886.16
Rubbish Removal	125.50	433.50
Renovating building		29,522.32
Legal expenses		700.00
Taxes		3,181.84
<u>TOTAL EXPENDITURES</u>	<u>\$12,571.17</u>	<u>\$54,414.35</u>

12. Petitioner's statement of assets and liabilities as of May 1, 1982 as reported to the Department is as follows:

ASSETS

Cash on hand	361.29
Cash in bank	551.27
Office supplies and equipment	1,000.00
Building	15,000.00
Land	2,000.00
<u>TOTAL ASSETS</u>	<u>\$18,912.56</u>

LIABILITIES

Accounts payable	
Wickes	\$1,855.15
Citibank	1,908.82
Mortgage	00.00
Loans payable	
St. Lawrence National Bank	432.96
<u>TOTAL LIABILITIES</u>	<u>\$4,196.93</u>

13. Petitioner maintains its own bank account at Oneida National Bank, has a Sears and Roebuck credit card and has a line of credit with Key Bank. Each

of the members of the board of directors is authorized to make deposits to and withdrawals from petitioner's account and to expend whatever sums are necessary to maintain petitioner's routine operations. Since Mr. and Mrs. Henderson reside in Texas, as a practical matter, Mr. and Mrs. Rounds have control of all expenditures and reimbursements.

14. The church building has three separate electric meters, but only one bill is received addressed to Harold Rounds and the Jesus Revivals. The church maintains its own telephone under the name Which Way In Coffeehouse (a planned activity which has not yet materialized) c/o Mr. Harold Rounds. Mr. Rounds owns a 1979 Mercury which is used to transport individuals to and from petitioner's services and to provide transportation for Mr. Rounds and Mr. Hyde in carrying out their ministerial duties. The vehicle is driven approximately 150 miles per week, and petitioner pays for all maintenance and repair. Mr. and Mrs. Rounds own a separate vehicle for their personal use.

15. Petitioner provides goods, services and monetary funds to persons deemed to be in need. The expenditure of such funds must be approved by two members of the board of directors. Petitioner submitted to the Department a list of fifteen such donations made prior to July 1982, but no canceled checks or other evidence of sums expended was provided.

16. Financial support for petitioner comes from tithes and regular donations by church members and offerings from other interested persons. In its projected budget for the years 1982 through 1986, petitioner estimated monthly donations of approximately \$2,000.00 from Mr. and Mrs. Henderson, \$100.00 from Mr. and Mrs. Rounds and \$100.00 from offerings made during church services.

17. On March 4, 1983, petitioner filed an amended certificate of incorporation with the Secretary of State which provides: (a) that no part of its net earnings

shall inure to the benefit of any member, trustee, director, officer or any private individual (except that reasonable compensation may be paid for services rendered to the corporation); (b) that no substantial part of its activities shall be carrying on propaganda or otherwise attempting to influence legislation (except as provided in Internal Revenue Code section 501[h]), or participating or intervening in any political campaign; and (c) that in the event of dissolution, all of its assets remaining after necessary expenses shall be distributed to an organization exempt under Code section 501(c)(3) or to the federal government or state or local government for a public purpose.

18. On June 30, 1983, the Internal Revenue Service granted petitioner exemption from federal income tax under Code section 501(c)(3).

CONCLUSIONS OF LAW

A. That section 1116(a)(4) of the Tax Law, in pertinent part, provides for exemption from sales and use tax for "[a]ny corporation..., organized and operated exclusively for religious, charitable, scientific,...or educational purposes,... no part of the net earnings of which inures to the benefit of any private shareholder or individual...". An organization is organized exclusively for one or more exempt purposes only if its organizing documents limit the purposes of such organization to one or more exempt purposes and do not expressly empower the organization to participate, other than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes (20 NYCRR 529.7[c][1]). An organization is regarded as being operated exclusively for an exempt purpose only if almost all of its activities accomplish one or more exempt purposes (20 NYCRR 529.7[d][2]). If an organization's net earnings inure in whole or part to the benefit of private shareholders or individuals, it will not be considered to be operated exclusively

for an exempt purpose. Furthermore, since "no part" of the net earnings of an organization may inure to the benefit of a private shareholder or individual (Tax Law §1116[a][4]) the amount or extent of such inurement or benefit is not determinative (see Unitary Mission Church v. Comm., 74 T.C. 507).

B. That an organization which applies for tax exemption has the burden of proving that it meets each of the requirements of the statute, including proof that no part of its assets or net earnings inures to the benefit of any private individuals (20 NYCRR 529.1[j][2]). An exemption granted to an organization under section 501(c) of the Internal Revenue Code does not automatically exempt the organization under section 1116(a) of the Tax Law (20 NYCRR 529.2[j][1]).

C. That petitioner's certificate of incorporation, as amended on March 4, 1983, sufficiently circumscribes its activities so as to satisfy the organizational test. However, petitioner failed to show that it has not violated the prohibition against the inurement of net earnings to the benefit of individuals. Although control of financial decisions by individuals who appear to benefit personally from certain expenditures does not necessarily indicate inurement to the benefit of those individuals, that fact coupled with failure to establish the appropriateness of the organization's expenses is sufficient to deny exemption (Unitary Mission Church v. Comm., 74 T.C. 507). The record establishes that Mr. and Mrs. Rounds had the ability to dictate the church's programs, prepare its budget and spend its funds with little or no direction from the other directors or the church membership. Approximately sixty-five percent of petitioner's annual expenditures were used to pay for utilities, maintenance and repair of the church building which included Mr. and Mrs. Round's apartment. Moreover, petitioner paid completely for maintenance of a vehicle owned by Mr. Rounds. An organization may incur ordinary and necessary expenses including payment of

salaries or other forms of compensation without violating the prohibition against inurement to the benefit of individuals (St. Germain Foundation v. Comm., 26 T.C. 648). But here, petitioner failed to show that it maintained a clear line of demarcation between its own activities and the personal expenditures of Mr. and Mrs. Rounds. There was no evidence to demonstrate the criteria utilized by petitioner to determine the reasonableness of its expenditures or the relation-ship between compensation provided and services rendered. Furthermore, at the time of its incorporation, petitioner formally assumed certain debts of Harold R. Rounds associated with the renovation of the church building, but there is no evidence to establish that petitioner assumed legal ownership of the church property at the same time (Finding of Fact "7"). Under the circumstances, it cannot be said that no part of the earnings of petitioner inures to the benefit of individuals (cf. Church of the Transfiguring Spirit, Inc. v. Comm., 76 T.C. 1; Bubbling Well Church of Love v. Comm., 74 T.C. 531; Unitary Mission Church v. Comm., 74 T.C. 507).


D. That the petition of The Jesus Revivals, Inc. is denied.

DATED: Albany, New York

STATE TAX COMMISSION

SEP 26 1986


PRESIDENT


COMMISSIONER


COMMISSIONER