

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	DECISION
POLISH ARMY VETERANS ASSOCIATION	:	
- POST NO. 1	:	
for Redetermination of Exempt Organization	:	
Status under Articles 28 and 29 of the Tax Law.	:	

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Petitioner, Polish Army Veterans Association - Post No. 1, 617 Fillmore Avenue, Buffalo, New York 14212, filed a petition for redetermination of exempt organization status under Articles 28 and 29 of the Tax Law (File No. 47579).

A formal hearing was held before Arthur Bray, Hearing Officer, at the offices of the State Tax Commission, 65 Court Street, Buffalo, New York on June 26, 1984 at 9:15 a.m. with all documents to be submitted on or before July 26, 1984. Petitioner appeared by George Respondek, Commander. The Audit Division appeared by John P. Dugan, Esq. (Debra J. Dwyer, Esq., of counsel).

ISSUE

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

FINDINGS OF FACT

1. On June 30, 1983 petitioner filed an Application For An Exempt Organization Certificate.
2. On July 25, 1983, the Audit Division advised petitioner that it did not qualify for an exemption from sales tax since petitioner's members were not veterans of the Armed Forces of the United States.

3. Petitioner is a subordinate post of the Polish Army Veterans Association of America, Inc. ("the National Association"). The National Association was incorporated in New York State on or about May 16, 1935. The Certificate of Incorporation of the National Association provides, in part, that it was established:

"To organize all Polish Army Veterans residents of the United States in order to assist, provide relief and promote the general welfare of its members and the doing of all things necessary and incident thereto."

4. Article II of the Constitution of the National Association states:

"Aims of the Organization.

The Polish Army Veterans Association of American Inc., has as its aims:

1. Organizing and accepting for membership all former members of the Polish Armed forces who:
  - a. Were recruited as volunteers for service with the Polish Army in France in the 1st World War from the United States and Canada.
  - b. Served with the Polish Armed Forces during the 2nd World War under the Allied Command / excluding those who served in the so-called Polish Forces under the command of Communist Russia/.
  - c. Also, the sons and daughters of veterans of the Polish Armed forces, who served in the Armed Forces of the United States.
2. Respecting and advocating within the ranks of the organization and Americans of Polish descent those ideals for which the soldiers of the Polish, American, British and French Forces fought on the battlefields of World War I and World War II.
3. Upholding among the members of the association the spirit of brotherly love, comradeship and the fine traditions of a soldier.
4. Holding aloft and in dignity the standard of traditional national honor.
5. Guaranteeing to all members of the Association substantial material aid to the disabled particularly and the sick and infirm veterans generally through the means of a permanent general fund out of which such material aid shall be given to the members of the Association."

5. Petitioner is separately incorporated in the State of New York under section 402 of the New York Not-For-Profit Corporation Law. The second paragraph of petitioner's Certificate of Incorporation states, in part, that petitioner

was not formed for pecuniary profit or gain and that no part of its assets, income or profit inures to the benefits of its members except to the extent permitted under the Not-For-Profit Corporation Law.

6. The third paragraph of petitioner's Certificate of Incorporation, which describes the purposes for which petitioner was formed, states, in part:

"(a) To organize veterans of the Polish Army residing in the Counties of Erie and Niagara in the State of New York; to provide for the mutual assistance, enjoyment, entertainment and improvements of its members socially and physically by encouraging them to participate in civic, social and fraternal functions and activities; to provide for and promote their general welfare; to promote the social and intellectual standing of its members and generally to foster a better understanding among them."

7. Petitioner subsists primarily on donations from individuals, dues and card parties. The average age of petitioner's members is approximately 67 or 68.

8. Most of petitioner's funds are spent on maintaining their house and helping veterans of the Polish Army who are ill or who are in need of financial support. Petitioner also helps refugees and other organizations.

9. All of petitioner's members are citizens of the United States.

10. Veterans of the Polish Armed Forces formed units in exile during World War II and fought under the Allied Command. In recognition of their service, the Congress of the United States has given veterans of the Polish Army benefits limited to hospitalization.

11. At the hearing, petitioner argued that if it was not entitled to an exemption as a veterans' organization, it would be entitled to an exemption as a charitable organization.

#### CONCLUSIONS OF LAW

A. That Tax Law §1116(5) provides for an exemption for veterans' organizations as follows:

"(5) A post or organization of past or present members of the armed forces of the United States, or an auxiliary unit or society of, or a trust or foundation for, any such post or organization:

(A) organized in this state,

(B) at least seventy-five percent of the members of which are past or present members of the armed forces of the United States and substantially all of the other members of which are individuals who are cadets or are spouses, widows, or widowers of past or present members of the armed forces of the United States or of cadets, and

(c) no part of the net earnings of which inures to the benefit of any private shareholder or individual..."

B. That since petitioner is not an organization of past or present members of the Armed Forces of the United States, it is not entitled to an exemption by virtue of Tax Law §1116(5).


C. That although petitioner's activities are commendable, it is not entitled to an exemption as a charitable organization since it is organized partially for social and fraternal purposes and, as such, is not organized exclusively for charitable purposes (20 NYCRR 529.7(c)(1)(1)(a)).

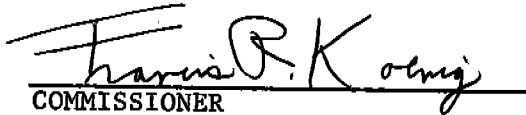
D. That the petition of the Polish Army Veterans Association - Post No. 1 is denied.

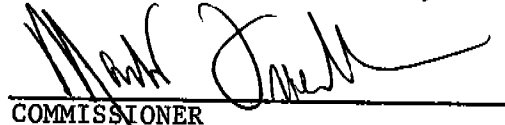
DATED: Albany, New York

STATE TAX COMMISSION

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