

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
CICERO LIONS CLUB	:	DECISION
for Redetermination of Exempt Organization	:	
Status under Articles 28 and 29 of the Tax Law.	:	

Petitioner, Cicero Lions Club, P.O. Box 57, Cicero, New York 13041, filed a petition for redetermination of exempt organization status under Articles 28 and 29 of the Tax Law (File No. 47730).

A formal hearing was held before Arthur Bray, Hearing Officer, at the offices of the State Tax Commission, 333 East Washington Street, Syracuse, New York, on September 18, 1984 at 1:15 P.M. Petitioner appeared by Keith King, Director. The Audit Division appeared by John P. Dugan, Esq. (Paul A. Lefebvre, Esq., of counsel).

ISSUE

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

FINDINGS OF FACT

1. On June 23, 1983, petitioner, Cicero Lions Club, filed an Application for an Exempt Organization Certificate.

2. On July 22, 1983, the Audit Division advised petitioner that it did not qualify for an exemption from sales tax since it was not organized and operated exclusively for one or more of the exempt purposes specified in section 1116(a)(4) of the Tax Law. The Audit Division also advised petitioner that, in accordance with Revenue Ruling 54-243, 1954-1 C.B. 92, a separate fund

could be established which would be exempt from tax under Internal Revenue Code section 501(c)(3). It was stated that if petitioner applied to the Internal Revenue Service for such an exemption and the exemption were granted, the Audit Division would accept this as a basis for granting the fund an exemption from sales tax¹.

3. Petitioner is chartered by and is a subordinate club of The International Association of Lions Clubs ("International Lions").

4. Article I, section c of the International Lions' constitution provides that the International Lions' motto shall be "We Serve".

5. Article II of the constitution provides:

"ARTICLE II
Purposes and Objects

The Objects of this club shall be:

- A. To create and foster a spirit of understanding among the peoples of the world.
- B. To promote the principles of good government and good citizenship.
- C. To take an active interest in the civic, cultural, social and moral welfare of the community.
- D. To unite the members in the bonds of friendship, good fellowship and mutual understanding.
- E. To provide a forum for the open discussion of all matters of public interest; provided, however, that partisan politics and sectarian religion shall not be debated by club members.
- F. To encourage service-minded men to serve their community without personal financial reward, and to encourage efficiency and promote high ethical standards in commerce, industry, professions, public works and private endeavors."

1 Although petitioner maintained at the hearing that it sought an Exempt Organization Certificate for its special fund, the only application that was made and considered was on behalf of the Cicero Lions Club without any restriction.

6. The first and second by-laws of the International Lions provide:

"No. 1

This club shall not endorse or recommend any candidate for public office, nor shall partisan politics or sectarian religion be debated by members in meetings of this club.

No. 2

Except to further his progress in Lionism, no officer or member of this club shall use his membership as a means of furthering any personal, political, or other aspiration, nor shall the club, as a whole, take part in any movement not in keeping with its purposes and objects."

7. The International Lions was formed in 1917 for the purpose of consolidating the existing clubs into an influential unit for the service of humanity. The International Lions attempts to gear projects and activities to the needs of the community without personal reward. Individuals join Lions clubs in order to help individuals less fortunate than they are.

8. Petitioner maintains two separate funds - an administrative fund and a special projects fund. The administrative fund arises from the portion of the local members' dues which it is permitted to retain. The administrative fund is spent on such items as stamps, get well cards, correspondence, flowers and other small miscellaneous items.

9. The special projects fund is the fund to which monies that are raised for charitable purposes are deposited.

10. Petitioner has two major projects per year in which funds are raised. One project is the white cane sale which is conducted at or around the time of Thanksgiving. The funds derived from this event are utilized to provide baskets of food for the needy. The second project, in which funds are raised,

is a fishing derby during the month of May. This activity provides petitioner with funds to help the blind.

11. Paragraph 7 of section E of Article 8 of the constitution of the International Lions provides in substance that the Board of Directors may not permit the expenditure of funds raised from the public for administrative purposes.

12. Petitioner maintains separate savings accounts for its special projects fund and its administrative fund. Petitioner also maintains a checking account. The funds from the checking account are derived from either savings account. However, petitioner maintains a separate ledger which discloses the source of the funds for each check.

13. In 1983, petitioner made the following donations: \$222.00 for eyeglasses and examinations for needy children; \$100.00 to the Onondaga County Department of Parks and Recreation; \$250.00 to the Empire State Speech and Hearing Clinic; and \$5,000.00 to the Leader Dog School. In addition, petitioner contributed \$1,405.00 towards Christmas baskets for the needy, \$100.00 to the Central Eye Bank and \$100.00 to a volunteer ambulance association.

14. Petitioner has one Board of Directors' meeting per month and two general membership meetings per month during the fall, winter and spring of each year. At the general meetings, there are meals and guest speakers. Petitioner usually offers to pay for the meals of the speakers who attend the meetings. However, most speakers decline the offer and pay for their own meals.

15. Petitioner holds a yearly Christmas party to which members of other local Lions Clubs are invited. The members pay for the meal by a pro rata assessment.

16. The International Lions and its subordinate clubs have been granted an exemption under section 501(c)(4) of the Internal Revenue Code as a civic organization.

CONCLUSIONS OF LAW

A. That Tax Law §1116(a)(4) provides:

"§1116. Exempt organizations.

(a) Except as otherwise provided in this section, any sale or amusement charge by or to any of the following or any use or occupancy by any of the following shall not be subject to the sales and compensating use taxes imposed under this article:

* * *

(4) Any 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 (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation, (except as otherwise provided in subsection (h) of section five hundred one of the United States internal revenue code of nineteen hundred fifty-four², as amended), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office;."

B. That in order for an organization to be exempt from sales and compensating use tax, it must establish that it is organized and operated exclusively for one or more exempt purposes [20 NYCRR 529.7(b)(2)].

2 26 U.S.C.A. §501(h).

C. That in order for an organization to be organized exclusively as a charitable organization, its organizing documents must "...limit the purposes of such organization to one or more exempt purposes" [20 NYCRR 529.7(C)(1)(i)(a)].

D. That although petitioner's activities are commendable, petitioner's constitution, noted, in part, in Finding of Fact "5", supra, clearly does not limit petitioner's activities to one or more exempt purposes. Accordingly, the Audit Division properly denied petitioner's application for an exempt organization certificate.

E. That the petition of Cicero Lions Club is denied without prejudice to a proper application for an exempt organization certificate for petitioner's special fund.

DATED: Albany, New York

FEB 06 1985

STATE TAX COMMISSION

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