

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
NEW YORK CITY ELEMENTARY SCHOOL	:	DECISION
PRINCIPALS ASSOCIATION	:	
	:	
for Redetermination of Exempt Organization	:	
Status under Articles 28 and 29 of the Tax Law.	:	

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Petitioner, New York City Elementary School Principals Association, 500 Macon Street, Brooklyn, New York 11233, filed a petition for redetermination of exempt organization status under Articles 28 and 29 of the Tax Law (File No. 56078).

A hearing was held before Daniel J. Ranalli, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 9, 1985 at 1:15 P.M. Petitioner appeared by Eustace Forde and Joseph Mehlman. The Audit Division appeared by John P. Dugan, Esq. (Lawrence A. Newman, Esq., of counsel).

ISSUE

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

FINDINGS OF FACT

1. On or about November 15, 1983, petitioner, New York City Elementary School Principals Association, filed an Application For An Exempt Organization Certificate. On July 11, 1984, 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 purposes specified in section 1116(a)(4) of the Tax Law.

2. With respect to the organizational test required by section 1116(a)(4), the July 11, 1984 letter stated:

"Your association fails to meet the organizational test for the following reasons:

1. Your Constitution and Bylaws lack the required non-inurement and restrictive legislation provisions.
2. The dissolution provision contained in Article X, sections 1 and 2 of your Constitution is not acceptable because it fails to limit the distribution of your assets, upon dissolution, solely for one or more of the exempt purposes specified in section 1116(a)(4) of the Sales Tax Law."
3. The dissolution provision of petitioner's constitution dated June, 1979 provided as follows:

"ARTICLE X - DISTRIBUTION OF FUNDS IN THE EVENT OF DISSOLUTION OF NYCESPA

Section 1. In the event of the dissolution of NYCESPA, its assets shall be liquidated and its debts paid. If funds remain, they shall be refunded to those Active members who were in good standing for the last full fiscal year prior to the date of dissolution and who are Active members in good standing at the time of the dissolution.

Section 2. The amount of refund to each of these members in good standing shall be the product of his/her paid dues for the last full fiscal year prior to the date of dissolution and the ratio of remaining funds to the total dues collected in that fiscal year."

In April, 1983, petitioner amended its constitution, in part, as follows:

"ARTICLE X - DISTRIBUTION OF FUNDS IN THE EVENT OF DISSOLUTION OF NYCESPA

In the event of the dissolution of NYCESPA, its assets shall be liquidated and its debts paid. If funds remain they will be distributed for an exempt purpose specified in the Sales and Use Tax law, or to the Federal Government or to New York State or to a local government body within New York for public purpose.

- ARTICLE XI - No part of the Net Income of this Organization will inure to the Benefit of Private Shareholders, Members or Individuals.
- ARTICLE XII - The Organization Will Not, as a Substantial Part of its Activities Attempt to Influence Legislation.
- ARTICLE XIII - The Organization Will Not Participate to Any Extent in a Political Campaign for or Against any Candidate for Public Office."

4. Petitioner's constitution sets forth the purposes of the organization as follows:

"ARTICLE II - OBJECTIVES - TO PLAY A LEADERSHIP ROLE IN AMERICAN EDUCATION:

- Section 1. By developing, organizing and implementing seminars, conferences, forums, etc., in order to provide continuing education for Elementary School Principals to aid and assist them in keeping abreast of new dimensions in education and to aid and assist them in maintaining and sharpening their skills as educators and educational leaders.
- Section 2. By developing, organizing and implementing educational programs geared to parents of elementary school children to enhance their sophistication of the parents role in the education process.
- Section 3. By developing, organizing and implementing educational programs geared to elementary school teachers, aides, and other employees to sharpen educational skills and to teach a teamwork approach to the delivery of educational services.
- Section 4. By doing research and contributing to the body of knowledge under the general rubric of education.
- Section 5. By participating in a leadership capacity with other professional organizations in the establishment of educational programs and policies to improve and enhance education."

5. Petitioner's membership is limited to elementary school principals. Petitioner's Executive Board, consisting of 32 members, meets monthly after school to discuss a broad range of topics impacting on education. There are also several committees which meet regularly for more specialized discussions.

These committees include: Communication Arts, Curriculum, Gifted, Grievance, Pupil Personnel Services, School Buildings, School Improvement, Salary, Special Education and Testing. General meetings involving all of petitioner's members are held three or four times a year. At the general meeting, a speaker is usually invited to address the members on a topic of interest to school principals.

6. Petitioner and its members also participate in a variety of other activities in furtherance of their objectives. Petitioner's members have acted as consultants to the Board of Education; petitioner submits curriculum proposals to the State Department of Education; petitioner presents an award each year to a nonmember individual who has made an outstanding contribution to education; and petitioner publishes a newsletter which is distributed primarily to individuals and organizations involved in education. Petitioner also sends a representative to Council of Supervisors and Administrators ("CSA") meetings. CSA is the principals' union. According to several of petitioner's newsletters, one of petitioner's goals was to obtain a single salary for all principals by working through CSA. Petitioner also presents awards annually to outstanding graduating students of the elementary school system. Other than an annual convention at which a luncheon is served, petitioner does not have any activities of a social nature.

7. Petitioner has neither applied for nor received an exemption from Federal income tax under the Internal Revenue Code.

#### CONCLUSIONS OF LAW

A. That section 1116(a)(4) of the Tax Law 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-four, 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 20 NYCRR 529.7(d)(2) provides:

"An organization will be regarded as 'operated exclusively' for one or more exempt purposes only if almost all of its activities accomplish one or more exempt purposes specified in section 1116(a)(4) of the Tax Law and described in subdivision (e) of this section. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose."

C. That inasmuch as petitioner amended its constitution to meet the objections expressed by the Audit Division, it meets the organizational test required of an exempt organization. Petitioner's activities, however, fail to meet the operational test. Although many of petitioner's activities ultimately have an impact on education, a substantial portion of them are designed primarily to improve the profession of school principal and are of concern only to a school principal; for example, the single salary issue and such committees as School Buildings and Grievance. These activities serve to improve the efficiency of the school principal, but they are not educational in nature. Therefore, since petitioner carries on substantial noneducational activities, it is not an exempt organization within the meaning and intent of section 1116(a)(4) of the Tax Law.

D. That the petition of New York City Elementary School Principals Association is denied.


DATED: Albany, New York

OCT 22 1985

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER