

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
FRONT RUNNERS NEW YORK, INC.	:	DECISION
	:	
for Redetermination of Exempt Organization	:	
Status under Articles 28 and 29 of the Tax Law.	:	

Petitioner, Front Runners New York, Inc., Box 363, Village Station, New York, New York 10014, filed a petition for redetermination of exempt organization status under Articles 28 and 29 of the Tax Law (File No. 56377).

A hearing was held before Doris E. Steinhardt, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 10, 1985 at 1:15 P.M., with all briefs to be submitted by October 15, 1985. Petitioner appeared by James Levin, Esq. The Audit Division appeared by John P. Dugan, Esq. (Anne W. Murphy, Esq., of counsel).

ISSUE

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

FINDINGS OF FACT

1. On or about November 12, 1983, petitioner, Front Runners New York, Inc. ("FRNY"), 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 August 13, 1984, the Audit Division denied petitioner's application for failure to meet the operational test for exemption; the letter stated, in pertinent part:

"While your organization conducts clinics which have an educational value, a substantial amount of its activities are athletic, recreational and social in nature... [I]t cannot be said that your activities are exclusively educational or directed towards the support and development of amateur athletes for participation in national or international amateur sports competition."

3. FRNY was organized on October 1, 1979 and subsequently incorporated on August 30, 1983 as a Type B corporation pursuant to section 201 of the Not-for Profit Corporation Law. Its primary purpose is to provide encouragement and support to gay men and women, as well as to others regardless of sexual preference, who are interested in running and running-related activities. Petitioner's certificate of incorporation states the purposes for which it was formed as follows:

"To teach the skills and health-related benefits of running and jogging.

"To organize training sessions and clinics for instruction for healthy running and jogging.

"To provide lectures and workshops with guest speakers and demonstrations on running and jogging.

"To arrange for organized runs and competitions. To print and publish an informational newsletter on running and jogging and related topics."

4. FRNY provides running instruction, conducts "fun runs" and the annual Gay Pride Run, publishes a monthly newsletter and sponsors some social and fund-raising activities.

(a) Petitioner offers fourteen-week running clinics semi-annually. These clinics, which are free of charge to members and non-members alike, afford instruction in basic running form, speed work, hill work and stretching.

(b) Every Saturday at 10:00 A.M. and every Wednesday at 7:00 P.M., petitioner holds "fun runs," non-competitive runs of from one to five miles open to runners of all abilities. When a beginning runner wishes to participate

in a fun run, petitioner assigns a more experienced runner to him or her as a coach, to render advice on, among other things, running style, shoes and stretching. Twice per month, petitioner also sponsors special runs ranging in length from one to fourteen miles. Historically, after petitioner's sponsored runs, the runners met to eat and to discuss topics of interest to runners. These informal gatherings evolved into post-run FRNY meetings, where the organization's business is conducted and speakers are presented.

(c) Each June, petitioner sponsors the Gay Pride Run, a five-mile race held in Central Park, in cooperation with the New York Road Runners Club, which furnishes finish-line equipment, and the New York City Department of Parks and Recreation, which supplies crowd control barriers. The fifth annual Gay Pride Run held on June 29, 1985 attracted nearly 1,000 participants. Petitioner charged runners an entry fee of \$6.00 and, prior to the commencement of the race, each participant received a carry-all bag containing a race T-shirt, a number tag and FRNY literature. Because the entry fees are insufficient to cover the expenses petitioner incurs in conducting the race, petitioner solicits and sells advertising space in a race program and engages in limited fund-raising activities. Such activities have included benefit dances prior to each Gay Pride Run, the solicitation of donations from members, and the sale of running merchandise (club racing uniforms, T-shirts and sweatshirts imprinted with FRNY's logo) to club members and friends at a small mark-up.

(d) FRNY publishes a monthly newsletter, consisting of running-related articles submitted by club members, summaries of past business meetings, announcements of upcoming events and schedules of runs and races.

5. FRNY organizes some social events, such as theater parties and track and field games, to promote camaraderie among its membership.

6. FRNY fields participants in many competitive events, including the New York City Marathon and the Philadelphia distance run (a half marathon). In preparation for marathons, petitioner organizes and conducts specific training runs.

7. Petitioner employs the accrual method of accounting and maintains its books on a calendar year basis. The statement of its receipts and expenditures for the year 1983 follows.

RECEIPTS

Membership Dues	\$4635.00	
Running Merchandise Sales	3955.00	
Event Ticket Receipts	7981.40	
Party Receipts	2610.50	
Business Meeting Receipts	1394.50	
Transportation Receipts	1230.00	
Miscellaneous Income	27.70	
Race Entry Fees	5607.00	
Race Donations	1867.00	
Race Program Advertising	3490.00	
Race Fundraiser	882.00	
Miscellaneous Race Income	348.00	
Total Receipts		\$34,028.10

EXPENDITURES

Cost of Merchandise Sold	2607.71	
Office Operating Expense-Postage	1171.86	
Office Operating Expense-Printing	2029.51	
Office Operating Expense-Misc.	876.06	
Event Ticket Purchases	8813.50	
Party Expenditures	2559.32	
Business Meeting Expense	1536.36	
Transportation Expense	909.80	
Contributions	750.00	
Legal Expense	567.05	
Miscellaneous Expenses	444.28	
Race T-Shirts	3272.80	
Race Advertising	2019.00	
Race Program Expense	1239.00	
Race Carry-All Bags	1182.36	
Miscellaneous Race Expense	3455.34	
Total Expenditures		<u>33,433.95</u>

RECEIPTS IN EXCESS OF EXPENDITURES

\$ 594.15

8. Petitioner's certificate of incorporation 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.

9. On September 25, 1984, the Internal Revenue Service granted petitioner exemption from federal corporation income tax under Code section 501(c)(3).

CONCLUSIONS OF LAW

A. That Tax Law section 1116(a)(4) provides an exemption from the sales and compensating use taxes imposed under Article 28 to "[a]ny 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)..." In ascertaining whether an organization is organized exclusively for one or more of the enumerated exempt purposes, the focus is on the provisions of the organizing documents. The documents must limit the purposes of the organization to one or more exempt purposes and cannot expressly empower the organization to participate, other than as an insubstantial part of its activities, in activities which are not in

furtherance of one or more exempt purposes (20 NYCRR 529.7[c][1][1]). On the other hand, in determining whether the organization is operated exclusively for one or more exempt purposes, the focus is on the organization's activities. Nearly all of its activities must accomplish one or more exempt purposes; or stated in a different way, an organization will not be regarded as exempt if more than an insubstantial part of its activities is not in furtherance of an exempt purpose (20 NYCRR 529.7[d][2]).

B. That Treasury Regulation section 1.501(c)(3)-1(d)(3)(i) defines the term "educational" for purposes of Internal Revenue Code section 501(c)(3), the provision after which Tax Law section 1116(a)(4) is patterned, to embrace "[t]he instruction or training of the individual for the purpose of improving or developing his capabilities...".

C. That FRNY's certificate of incorporation sufficiently circumscribes its activities so as to satisfy the organizational test. Petitioner failed to show, however, that it operated exclusively for educational purposes and/or to foster national amateur sports competition. "[I]f a nonexempt activity is more than an insubstantial part of petitioner's activities, or if any activity of petitioner has more than an insubstantially nonexempt purpose, then petitioner must fail to qualify for exemption." First Libertarian Church v. Commr., 74 T.C. 396, 403 (1980). An examination of petitioner's statement of receipts and expenditures for 1983 reveals that event ticket sales and party receipts represented over 30 percent of its total receipts and event ticket purchases and party expenditures, over 30 percent of its total expenses. It thus cannot be said that petitioner's social and recreational activities constituted an insubstantial part of its overall activities. (See Church in Boston v. Commr., 71 T.C. 102 [1978], where petitioner's grants program, accounting for approximately

20 percent of all its receipts, was found to be a nonexempt activity which was "more than incidental" and disqualified it from exemption.¹⁾

D. That the petition of Front Runners New York, Inc. is hereby denied.

DATED: Albany, New York

FEB 18 1986

STATE TAX COMMISSION

Rodriguez Clev
PRESIDENT
Francis Q Koeng
COMMISSIONER
Mark Friedland
COMMISSIONER

1 "We hasten to point out that while the facts in the instant case merit a denial of exempt status to petitioner, we do not set forth a percentage test which can be relied upon for future reference with respect to nonexempt activities of an organization. Each case must be decided upon its own unique facts and circumstances." Id. at 108.