

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

WAVERLY SENIOR CITIZENS CLUB

DECISION

for Redetermination of Exempt Organization
Status under Articles 28 and 29 of the Tax Law.

Petitioner, Waverly Senior Citizens Club, P.O. Box 1, Farmingville, New York 11738, filed a petition for redetermination of exempt organization status under Articles 28 and 29 of the Tax Law (File No. 59287).

On January 15, 1986, petitioner waived a hearing before the State Tax Commission and requested the Commission to render a decision based on the Department of Taxation and Finance file. After due consideration, the Commission renders the following decision.

ISSUE

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

FINDINGS OF FACT

1. Petitioner, Waverly Seniors Citizens Club, **is** an unincorporated association sponsored by the Town of Brookhaven Department of Parks, Recreation, Culture and Human Resources.

2. Petitioner is governed by a uniform constitution developed by the Town of Brookhaven to govern the activities of the senior citizens clubs which the Town sponsors.

3. Petitioner's purposes are set forth in Article I of its constitution, which provides, in pertinent part, as follows:

regardless of color, religious beliefs, or country of birth or national origin. It is the intention of the Town administration to ensure that programs are designed to promote satisfactory use of leisure time, community involvement, social and emotional adjustment, physical well being, and in general to create an atmosphere favorable to personal growth, security and stability. This objective is to be accomplished with the direct input of the Mature Older Residents and the Elderly Advisory Commission, to the Town Council liaison and the Department and by such other means as discussion groups, public hearings and program network involvement."

4. Members must be residents or taxpayers of the Town of Brookhaven.

Members must also be 60 years of age, or the spouse of a member who is of age.

5. The essential and necessary expenses of each club are assumed by the Town as the sponsoring agency, with the exception of monies expended for food. No dues are required, but voluntary offerings may be made to defray expenses authorized by the membership and to form a treasury for the use of the club. Depending on budget availability, the Town may provide certain other services for petitioner.

6. Article X of the Constitution provides as follows:

"Article X -- Dissolution and Inurement Clauses

Section I

In the event the organization dissolves or terminates, after paying any outstanding liabilities, all remaining assets will be distributed exclusively for one or more of the purposes set forth in Section 116(A)(4) (sic) of the New York State Sales and Use Tax Law. For example: religious, charitable, testing for public safety, literary, educational, or the prevention of cruelty to children or animals.

Section II

The organization shall not be operated for profit and all income and earnings of the organization shall be used exclusively for organizational purposes, and no part of the net income, net earnings or assets of the organization shall inure to the benefit or profit of any private individual

7. Rule "7" of petitioner's "House Rules" provides: "There will be no political or religious discussions at any time."

8. Meetings are held Tuesdays (except during July and August) at the Farmingville Firehouse, Farmingville, New York, from 11:00 A.M. to 3:00 P.M. The activities at the meetings include: exercise, crafts, cards, bingo, luncheons, blood pressure checks, etc.

9. Speakers at petitioner's meetings have included fire and police officials speaking on safety, a senior citizens advocate, a state senator's aide speaking on bills favoring senior citizens, and a speaker discussing arthritis.

10. Petitioner offered its members trips to Brookhaven Laboratories, Camp Upton, the Police Academy at Yaphank, New York, Radio City and Lincoln Center in New York City and the Gateway Theatre.

11. Petitioner's members collected canned and boxed foods for the poor. Jewelry, lap robes, candy and billfolds made by members were also delivered to the Suffolk Infirmary at Yaphank. During 1985, petitioner made cash contribution: to charitable organizations as follows:

| | |
|--------------------------------|-----------------|
| Little Flower Children's Home | \$ 25.00 |
| American Cancer Society | 30.00 |
| Farmingville Fire House | 25.00 |
| Statue of Liberty Fund | 38.50 |
| Suffolk County Health Service | 10.00 |
| Toys for Retarded Children | 15.00 |
| TOTAL | <u>\$143.50</u> |

12. For the period February 22, 1983 through February 14, 1984 petitioner's receipts and expenditures were as follows:

RECEIPTS:

Contributions

Voluntary contributions for Coffee
and Cake

\$ 556.45

| | |
|--------------------------------|-----------------|
| Funding | |
| Town of Brookhaven for Music | 50.00 |
| Town of Brookhaven for One Bus | 100.00 |
| Fund Raising Activities | |
| Raffles | 1,909.75 |
| Chinese Auction | 194.46 |
| "Luncheon is Served" | 157.44 |
| Boutique | <u>1,054.59</u> |
| TOTAL | \$4,125.91 |

EXPENDITURES:

| | |
|----------------------------------|-----------------|
| Fund Raising Expenditures | |
| Raffle Cash Prizes | \$ 300.19 |
| Contributions | |
| Farmingville Fire Department | 25.00 |
| Farmingville Little League | 25.00 |
| Little Flower Children's Home | 25.00 |
| Senior Citizens Council | 15.00 |
| Senior Citizens Comfort Aid | 25.00 |
| Christmas Gifts | 75.00 |
| Operating Expenses | |
| Coffee, Tea and Cake | 505.94 |
| Sunshine Cards - Flowers - Gifts | 213.44 |
| P.O. Box | 20.00 |
| Table Decorations | 121.71 |
| Photography | 47.94 |
| Music for Luncheons | 505.00 |
| Free Luncheon for Membership | <u>1,707.90</u> |
| TOTAL EXPENDITURES | \$3,612.12 |

13. Petitioner filed an application for an exempt organization certificate which was received by the Technical Services Bureau of the Department of Taxation and Finance on January 29, 1982. After corresponding with and obtaining information from petitioner, the Technical Services Bureau denied petitioner exempt organization status by letter dated November 15, 1984.

CONCLUSIONS OF LAW

A. That section 1116(a) of the Tax Law provides, in pertinent part, as follows

"(a) Except as otherwise provided in this section, any sale

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 in determining 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)(i)). 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; i.e., 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 259.7(d)(2)).

C. That petitioner does not meet either the organizational or operational test set forth in the statute and regulations. While petitioner's objectives

and activities are commendable, it is essentially a social organization and its educational and charitable activities are incidental to its social and recreation objectives. (See: Matter of Fraternal Order of Police, Empire State Lodge, Inc., State Tax Commission, June 28, 1985.)

D. That the petition of Waverly Senior Citizens Club is hereby denied.

DATED: Albany, New York

STATE TAX COMMISSION

SEP 26 1986

PRESIDENT

Francis R. Koerig

COMMISSIONER

Mark J. ...

COMMISSIONER