

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
FINGER LAKES BUILDING OFFICIALS ASSOCIATION
for Redetermination of Exempt Organization
Status under Articles 28 and 29 of the Tax Law.

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DECISION

Petitioner, Finger Lakes Building Officials Association, 120 West Commercial Street, East Rochester, New York 14445, filed a petition for redetermination of exempt organization status under Articles 28 and 29 of the Tax Law (File No. 59745).

A hearing was held before Timothy J. Alston, Hearing Officer, at the offices of the State Tax Commission, 259 Monroe Avenue, Rochester, New York, on January 30, 1986 at 9:15 A.M. Petitioner appeared by Robert J. Bergin, Esq. The Audit Division appeared by John P. Dugan, Esq. (James Della Porta, Esq., of counsel).

ISSUE

Whether the Audit Division's denial of the application of the Finger Lakes Building Officials Association for exempt organization status was proper.

FINDINGS OF FACT

1. By application dated April 2, 1984, the petitioner, Finger Lakes Building Officials Association, submitted to the Audit Division an Application For An Exempt Organization Certificate seeking exemption from sales and use taxes under section 1116(a)(4) of the Tax Law. In its application, petitioner sought exemption under the relevant statute as an educational organization.

2. By letter dated January 16, 1985, the Audit Division informed petitioner that it failed to qualify for exemption from sales and use taxes. Based upon an analysis of the information and documentation submitted by petitioner in support of its application, the Audit Division concluded that petitioner was neither organized nor operated exclusively for educational purposes and therefore denied petitioner's application.

3. Petitioner's constitution and by-laws set forth as its purposes the following:

- "(a) To provide assistance to members in various ways, in the performance of their duties, to elevate the position of Building Officials compatible with the responsibilities and obligations placed upon them.
- (b) To exchange ideas, information, facts concerning matters and problems of common interest, create good fellowship and mutual understanding among members.
- (c) To encourage public acceptance of New York State Uniform Fire Prevention and Building Code standards which embrace performance standards for building materials, building equipment and construction methods that stress safety, conservation and economy in construction."

4. In order to attain the aforementioned goals, the constitution and by-laws specifically authorize the following activities:

- "(a) By distributing information to the members and to the public in general concerning public safety, health and welfare.
- (b) By suggesting legislative initiatives which would establish performance standards for building materials, building equipment and construction methods that reflect current industry developments in safety, energy, conservation and economy in construction.
- (c) By holding meetings at various times.
- (d) By publicizing the existence and activities of this Association through contact with public officials in other branches of government and with the general public.
- (e) By the collection of annual dues.
- (f) By encouraging compliance by the building industry with the New York State Uniform Fire Prevention and Building Code.
- (g) By working with the building industry to develop standards which reflect the improvements and limitations of current building materials, equipment and methods.
- (h) By providing support to members of the organization in the enforcement and development of building codes.

- (i) By working with professionals in the fire, police, and other related fields to educate the public with respect to building safety."

5. The constitution and by-laws also provide for three types of membership: active membership, associate membership and honorary membership. Active membership is restricted to building officials actively engaged in an official governmental capacity within the Finger Lakes region. Associate membership is open to all others interested in the association. Honorary membership may be conferred upon "individuals of distinction who have rendered outstanding service for the betterment of the Association and/or of the profession." In 1985, petitioner had 99 full members, 23 associate members and 8 honorary members.

6. Voting rights are restricted to "one member from each municipality, governmental department, or bureau." The constitution and by-laws make no provision for voting rights for associate or honorary members of petitioner.

7. Upon petitioner's dissolution, the constitution and by-laws provide that all remaining funds be turned over to the New York State Building Officials Conference ("NYSBOC") to be used "for educational purposes only". In addition, any and all property belonging to the petitioner at the time of such dissolution shall be turned over to the NYSBOC immediately.

8. Among petitioner's primary activities are luncheon meetings at which individuals active in the building professions speak on matters related to safety code enforcement and the building professions. Petitioner held seven such meetings during 1985. The subject matter addressed at these meetings in 1985 was as follows:

| <u>DATE</u> | <u>PROGRAM</u> |
|-------------------|---|
| January 9, 1985 | Fire Extinguishers: Types, Use & Maintenance |
| February 13, 1985 | Handicapped Requirements of the Code |
| March 13, 1985 | Asbestos |
| May 8, 1985 | Crete Core Block Building Method |
| June 12, 1985 | Hazardous Chemicals: They are Here to Stay |
| August 28, 1985 | Purposes and Procedures of Underwriter's Laboratories |
| November 13, 1985 | New York State Department of Labor's Duties, Roles, and Interaction with the Code |

The monthly meetings also include open discussions during which any member may address any matter of professional interest to the Association. Organizational and administrative matters are also discussed at the monthly meetings.

9. The Association's main event is its annual "Building Officials Educational Conference", held in April of each year, which features a three-day period of discussions and presentations on many topics of interest to individuals involved in the building professions and code enforcement. The 1985 conference scheduled approximately 18 hours of these discussions and presentations. The 1985 conference also scheduled 5 hours for activities primarily social in nature, most notably "Product Display and Attitude Adjustment Hour", "Dinner Hour and Hospitality", and "Lunch and Farewell".

10. In addition to its monthly luncheon meetings, the petition held three meetings in 1985 which were primarily social in nature:

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|-------------|----------------------------|
| July 26 | Annual F.L.B.O.A. Steakout |
| October 11 | Annual F.L.B.O.A. Clambake |
| December 13 | Annual Christmas Party |

11. Petitioner's members are kept apprised of dates and locations of meetings by way of a monthly newsletter. The newsletter also keeps members

informed of the availability of various courses in code enforcement, the professional activities of fellow members, employment opportunities, and other personal notes regarding members of petitioner.

12. Petitioner's monthly luncheon meetings and annual Educational Conference are not restricted to members; anyone may attend. Except for the monthly newsletter sent to members, the luncheon meetings are not advertised in any way. The Educational Conference is advertised in building trade publications such as the "New York State Building Log".

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 20 NYCRR 529.7(e)(1)(v) defines the term "educational" for purposes of section 1116(a)(4) of the Tax Law as follows:

"Educational shall mean the instruction or training of the individual for the purpose of improving or developing his capabilities or the instruction of the public on subjects useful to the individual and beneficial to the community. An organization may be educational even though it advocates a particular position or viewpoint so long as it presents a sufficiently full and fair exposition of the pertinent facts as to permit an individual or the public to form an independent opinion or conclusion. On the other hand, an organization is not educational if its principal function is the mere presentation of unsupported opinion."

C. That petitioner's constitution and by-laws do not sufficiently circumscribe petitioner's activities to satisfy the organizational test. In fact, petitioner's specific authorization to engage in legislative activity (Finding of Fact "4[b]") on behalf of the building professions and code enforcement clearly precludes petitioner from meeting the organizational test (20 NYCRR 529.7[c][2][1]). Further, the permitted activities set forth in Findings of Fact "4(g)" and "4(h)" also indicate that petitioner is empowered to participate, to a "more than insubstantial" degree, in non-educational activities. Accordingly, petitioner does not meet the organizational test as set forth in 20 NYCRR 529.7(c).

D. That petitioner has failed to show that it operates exclusively for educational purposes. "[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 (citations omitted)." First Libertarian Church v. Commissioner, 74 T.C. 396, 403 (1980). Of the twelve occasions in 1985 on which petitioner officially met as a group, three were primarily social gatherings. In addition,

petitioner's other meetings, while more educational in nature, also had "more than an insubstantial" amount of non-educational activities. Specifically, the luncheon meetings devoted time to eating and socializing, and the Educational Conference allotted five hours to social activities such as "Dinner Hour and Hospitality" and "Attitude Adjustment Hour". Finally, the monthly newsletters, which apprised only petitioner's members of the time and place of future meetings, allocated "more than an insubstantial" amount of space to informing members of personal matters and employment opportunities, information related to non-exempt activities.


F. That the petition of Finger Lakes Building Officials Association is denied.


DATED: Albany, New York

STATE TAX COMMISSION

JUN 19 1986


PRESIDENT


COMMISSIONER


COMMISSIONER