

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

CHENANGO FORKS HIGH SCHOOL STUDENT COUNCIL

DECISION

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

Petitioner, Chenango Forks High School Student Council, Attn: P. Litchfield, Box 204A, Gordon Drive, Binghamton, New York 13901, filed a petition for redetermination of exempt organization status under Articles 28 and 29 of the Tax Law (File No. 66839).

A hearing was held before Dennis X. Galliher, Hearing Officer, at the offices of the State Tax Commission, 164 Hawley Street, Binghamton, New York on November 21, 1986 at 9:00 A.M. Petitioner appeared by Hogan & Sarzynski, Esqs. (John B. Hogan, Esq., of counsel). The Audit Division appeared by John P. Dugan, Esq. (Deborah J. Dwyer, Esq., of counsel).

ISSUE

Whether the Audit Division's denial of the application of Chenango Forks High School Student Council for exempt organization status was proper.

FINDINGS OF FACT

1. On or about May 10, 1985 petitioner, by its faculty advisor, Peter Litchfield, filed an Application For An Exempt Organization Certificate seeking exemption from sales and use taxes under section 1116(a)(4) of the Tax Law, citing "educational" as the purpose upon which exempt status was claimed. Petitioner stated in the application that it had not received an exemption from Federal income tax, but that its "parent", Chenango Forks School District, had received such Federal exemption. In addition, such application indicated that

petitioner's Federal identification number and sales tax certificate of authority number were "as part of" number 156002166 (presumably the number assigned to the Chenango Forks School District).

2. Thereafter, in response to an August 9, 1985 Audit Division letter-request for more specific information, petitioner submitted a number of additional documents, including descriptions and reports of the events and activities it sponsored and/or administered, budget and expenditure information, and a copy of its constitution.

3. By a letter dated January 16, 1986, the Audit Division advised petitioner that its application for exempt status was denied. The basis for denial was stated to be that a review of the documents submitted revealed petitioner failed to meet the requisite "organizational" and "operational" tests as follows:

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

1. The stated purposes specified in your Constitution are not exclusively educational within the above definition of that term, nor are they among any of those specified in the statute for which sales tax exemption may be afforded.

2. Your Constitution lacks the required non-inurement, restrictive legislation and dissolution provisions.

The operational test relates solely to an organization's activities. An organization is 'operated exclusively' for the purposes specified in the statute only if almost all of its activities are in furtherance of those purposes.

1 "Educational" was defined as follows:

The term 'educational' relates to 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.'

Your Council does not meet the operational test for exemption. The information presented discloses that the council is primarily operated for the scheduling of various student activities, i.e., Council Dance, half time parade, field days, etc. Such operations are not considered to be educational, nor are they among those purposes specified in the statute for which sales tax exemption may be afforded. Further, the awarding of monies (scholarships) to students to be used in any way they choose is not an activity in advancement of education."

4. A timely petition to contest the above denial was filed by petitioner, asserting that petitioner qualifies for exemption in that all of its activities are scheduled and administered by the students **and** thus are educational.

5. At the hearing, petitioner presented no further evidence in support of the position that it was entitled to exemption in its own right. Rather, petitioner amended its petition and presented evidence to support the position that it was a part of the Chenango Forks School District. It **is** petitioner's position that it is a part of and all of its activities are conducted within the purview and under the control of the School District, as mandated by Regulations of the Commissioner of Education (see 8 NYCRR 172). Thus, petitioner asserts its activities are exempt under the exemption held by the School District.

6. Petitioner presented testimony and documentary evidence showing that its funds were accounted for and ultimately within the control of the School District.

CONCLUSIONS OF LAW

A. That Tax Law § 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". 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 (20 NYCRR 529.7[c][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.

"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... An organization will not be **so** regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose." (20 NYCRR 529.7[d][2]).

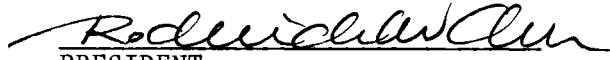
B. That from the evidence presented, and in view of the amended position taken by petitioner at the hearing, it is clear that petitioner no longer seeks exempt status in its own right. In turn, there appears to be no issue raised by the Audit Division as to the propriety of petitioner's activities as falling within, being accounted for under, controlled by and constituting a part of the activities of the school district. Accordingly, with no issue being raised in opposition to petitioner's activities as constituting school district activities, no opinion is rendered on such position. However, in the absence of a formal withdrawal of petitioner's petition for exempt status in its own right, such petition is, based upon the evidence presented, denied.

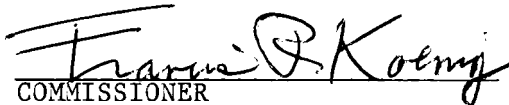
C. That the petition of Chenango Forks High School Student Council is hereby denied, without prejudice, and the Audit Division's denial of exempt status is sustained.

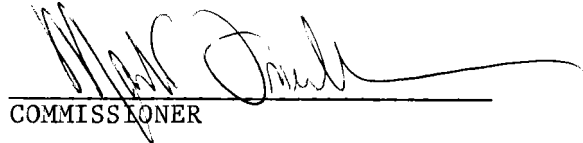
DATED: Albany, New York

STATE TAX COMMISSION

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PRESIDENT


COMMISSIONER


COMMISSIONER