

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

ROCKWOOD PARK CONCERNED RESIDENTS, INC.

DECISION

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

Petitioner, Rockwood Park Concerned Residents, Inc., 157-11 91st Street, Howard Beach, New York 11414, filed a petition for a redetermination of denial of exempt organization status under Articles 28 and 29 of the Tax Law (File No. 68466).

A hearing was held before Frank Landers, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January **13**, 1987 at 9:15 A.M., with all briefs filed by June **3**, 1987. Petitioner appeared by John A. Biondo, C.P.A. The Audit Division appeared by John P. Dugan, Esq. (Mark Volk, Esq., of counsel).

ISSUE

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

FINDINGS OF FACT

1. On or about December **13**, 1985, the Audit Division received an application for an exempt organization certificate, seeking exemption from sales and compensating use tax under Tax Law § 1116(a)(4), on behalf of petitioner, Rockwood Park Concerned Residents, Inc. (hereinafter "Rockwood").

2. By letter dated January 24, 1986, the Audit Division denied Rockwood's application for failure to meet both the organizational and operational criteria for exemption. The letter stated, in pertinent part:

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

1. The purposes stated in Article 3 of your Certificate of Incorporation are not exclusively charitable within the above definition of that term. Your corporation **is** organized substantially for civic and social welfare purposes.

The term 'social welfare' relates to promoting in some way the common good and general welfare of the people of the community, such as bringing about civic betterment and social improvements. While such purposes are socially desirable they are not among those specified in the statute for which sales tax exemption may be granted.

2. The dissolution provision contained in Article 3(d) of your Certificate of Incorporation is not acceptable because it fails to dedicate the assets **of** the corporation to one or more exempt purposes specified in section 1116(a)(4) of the Sales Tax Law.

* * *

The information presented discloses that your corporation is operating in a manner similar to the organization described in Revenue Ruling 75-386 as its primary activity consists of hiring a private security patrol for the protection of residents. This purpose is considered to be social welfare in nature rather than charitable. Since social welfare purposes are not among those specified in the statute, your corporation does not meet the operational test for exemption.

Further, we note that the Federal exemption received by your corporation is under section 501(c)(4) of the Internal Revenue Code, as a social welfare organization, rather than under section 501(c)(3), as a charitable organization, which is identical to the Sales Tax Law.

Since your corporation is not both organized and operated exclusively for one or more of the purposes specified in section 1116(a)(4) of the Tax Law, it does not qualify for sales tax exemption."

3. Rockwood was incorporated on February 7, 1983 pursuant to section 402 of the Not-for-Profit Corporation Law ("NFPCL") as a "Type A" corporation (NFPCL § 201[b]). The Certificate of Incorporation states that the corporation was organized for the following purposes:

- "1. To unite in common organization those members or residents in the community known as Rockwood Park and the adjoining community known as Spring Creek Park.
2. To facilitate the improvement of community services including protection and welfare of residents, assisting and developing plans to create a safer community, participating in programs for the general improvement of the community.
3. To exercise, promote and protect the privileges and interests of Rockwood Park and Spring Creek Park; to foster a healthy interest in the civic affairs of the community; to develop good citizenship and to inquire into civic abuses and to seek reformation thereof."

4. Rockwood's by-laws do not elaborate on corporate purposes or scope of activity, but describe and delineate the offices, members, directorships, officers and miscellaneous administrative functions.

5. Rockwood's chief function is providing a paid security patrol 24 hours per day, seven days a week, 52 weeks a year. Said patrols were set up as a deterrent to crime which was rampant in the Rockwood Park and Spring Creek Park areas of Jamaica, Queens prior to their institution in 1983.

6. In addition to security patrols, Rockwood implemented various programs to prevent crime: a fingerprinting program for children, publication of a newsletter called "The Bulletin", sponsorship of an annual information night, seminars with trained personnel from the fire department, police department or other professional agencies, and a crime prevention essay and poster contest run in conjunction with area schools.

7. Petitioner could not provide a breakdown of expenditures or time commitments allotted to each of the programs mentioned in Finding of Fact "6", but it was conceded that its major expenditure was for the security patrol service.

8. Rockwood finances its activities through a \$10,000.00 contract with the Division of Criminal Justice Services entered into sometime in 1984, membership dues and contributions from the community at large. No detailed budget or financial statements were submitted on behalf of petitioner.

9. On or about March 29, 1985, petitioner was granted an exemption from Federal income taxation pursuant to section 501(c)(4) **of** the Internal Revenue Code.

10. Section 3(d) of Rockwood's Certificate of Incorporation describes the distribution of assets on dissolution or liquidation. Said clause provides that no member shall be entitled to any distribution or division of the remaining property or proceeds of the corporation and that said property or proceeds shall be used or distributed subject to the order of the Supreme Court of the State of New York as provided by law for those purposes set forth in paragraph 4 of the Certificate of Incorporation, which was left blank by petitioner, and within the intendment of section 501(c) of the Internal Revenue Code of 1954.

11. Petitioner contends that it has met the organizational and operational requirements of Tax Law § 1116(a)(4) qualifying it to be an exempt organization.

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, 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 ... 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. Tax Law § 1116(a)(4) is virtually identical to section 501(c)(3) of the Internal Revenue Code which sets forth a portion of the Federal list of exempt organizations. The Internal Revenue Code makes a distinction between corporations organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes and those civic organizations not organized for profit but operated exclusively for the promotion of social welfare pursuant to I.R.C. § 501(c)(4).

C. 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 can not 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]; Woodhaven Residents Block Association, Inc., State Tax Commission, November 20, 1986).

D. That 20 NYCRR 529.7 (e) (1) defines "charitable" and "'educational'" for purposes of Tax Law § 1116(a)(4) as follows:

"(ii) Charitable. The term charitable includes: relief of the poor, distressed, or underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments, or works; lessening the burdens of government; the promotion of social welfare by organizations designed to accomplish any of the above purposes, or to lessen neighborhood tensions; to eliminate prejudice and discrimination; to defend human and civil rights secured by law; or to combat community deterioration and juvenile delinquency.

* * *

(v) Educational. 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.'

The New York regulation pertaining to "charitable" was patterned after Treasury Regulation § 1.501(c)(3)-1(d)(2). Likewise, the New York definition of "educational" is virtually identical to the definition in Treas. Reg. § 1.501(c)(3)-1(d)(3). It is noteworthy that the Federal regulations were promulgated pursuant to Internal Revenue Code § 501(c)(3) and not Code § 501(c)(4), the latter of which pertains to civic organizations operated exclusively for the promotion of social welfare like Rockwood Park Concerned Residents, Inc. Even though the term social welfare is used in the definition of "charitable" in the Federal and State regulations, civic organizations operated for the promotion of social welfare do not constitute charitable

organizations within either Internal Revenue Code § 501(c)(3) or Tax Law § 1116(a)(4),

E. That petitioner was incorporated under Not-for-Profit Corporation Law § 201(b) as a "Type A" not-for-profit corporation with its stated purposes being civic, social and political in nature, not charitable or educational.

F. That petitioner's Certificate of Incorporation does not satisfy the organizational test set forth in Tax Law § 1116(a)(4), in that none of the enumerated tax purposes are set forth therein. Further, petitioner's operations are not exclusively educational and/or charitable as these terms are defined in 20 NYCRR 529.7(e)(1), supra. The major expenditure of Rockwood was for a security service, which activity comprised the substantial part of petitioner's activities, whereas the seminars, essay and poster contests, and information nights it sponsors were the insubstantial part of its activities.


G. That petitioner's Federal exempt status was granted pursuant to Internal Revenue Code § 501(c)(4) not Internal Revenue Code § 501(c)(3), the model for New York Tax Law section 1116(a)(4), and therefore Rockwood's Federal exemption was based upon its status as a social welfare organization, not a charitable organization.

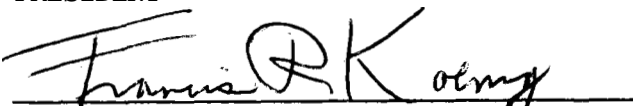
H. That the petition of Rockwood Park Concerned Residents, Inc. is hereby denied.

DATED: Albany, New York

STATE TAX COMMISSION

AUG 28 1987


PRESIDENT


COMMISSIONER


COMMISSIONER