

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Erie County Bar Association :

for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of  
Sales & Use Tax :  
under Article 28 of the Tax Law  
for the Period 12/1/72-2/1/76. :

AFFIDAVIT OF MAILING

State of New York  
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 17th day of August, 1979, he served the within notice of Determination by mail upon Erie County Bar Association, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Erie County Bar Association  
c/o Richard F. Griffin  
Buffalo, NY 14202

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this  
17th day of August, 1979.

Victoria Gary

Jay Vredenburg

JAMES H. TULLY JR., PRESIDENT  
MILTON KOERNER  
THOMAS H. LYNCH

JOHN J. SOLLECITO  
DIRECTOR

Telephone: (518) 457-1723

August 17, 1979

Erie County Bar Association  
c/o Richard F. Griffin  
1758 Statler Hilton  
Buffalo, NY 14202

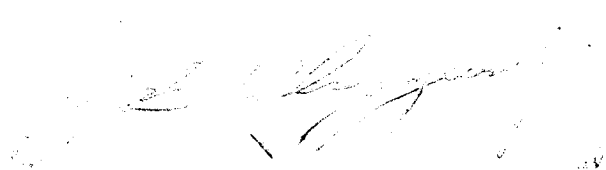
Gentlemen:

Please take notice of the Determination of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1138 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,



cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Application :  
of :  
ERIE COUNTY BAR ASSOCIATION : DETERMINATION  
for Revision of a Determination or for Refund :  
of Sales and Use Taxes under Articles 28 and :  
29 of the Tax Law for the Period December 1, :  
1972 through February 1, 1976. :

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Applicant, Erie County Bar Association, 602 Ellicott Square Building, Buffalo, New York 14203, filed an application for revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period December 1, 1972 through February 1, 1976 (File No. 13838).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, 65 Court Street, Buffalo, New York, on July 20, 1978 at 9:15 A.M. Applicant appeared by Thomas M. Barney, Esq. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Paul Lefebvre, Esq., of counsel).

#### ISSUE

Whether applicant is an organization exempt from the imposition of sales and use taxes, under section 1116(a)(4) of the Tax Law.

#### FINDINGS OF FACT

1. On March 11, 1976, applicant, Erie County Bar Association (hereinafter "ECBA"), filed an Application for Credit or Refund of State and Local Sales or Use Tax for the period December 1, 1972 through February 1, 1976, in the amount of \$5,855.66.

The claim for refund was based on ECBA's opinion that it was an organization exempt from sales and use tax under section 1116(a)(4) of the Tax Law and that, as such, it was entitled to a refund on the amount of sales tax paid on its purchases during the aforementioned period.

2. On March 22, 1976, the Sales Tax Bureau denied the refund claim in full. The denial was based on the Sales Tax Bureau's position that ECBA was organized and did operate for purposes not within those described in section 1116(a)(4) of the Tax Law. The amount of the refund claim is not at issue.

3. ECBA was incorporated in the State of New York on June 29, 1887. The Certificate of Incorporation, with reference to the organization's purposes, provides the following:

That its object is to cultivate the science of jurisprudence; to promote reforms in the law; to elevate the standard of integrity, honor and courtesy in the legal profession and to cherish the spirit of brotherhood among the members thereof.

Membership is open to any member of the Bar of the State of New York, who resides or has an office in Erie County. Associate membership is available to any member of the Bar of the State of New York, who is engaged in active practice but does not reside or have an office in Erie County.

Any form of membership application is subject to screening by a membership committee and to a favorable vote by a majority of the Board of Directors.

4. The activities of ECBA are carried on through its standing and special committees. ECBA has 58 committees, 27 of which are standing committees provided for by Article IX of ECBA's By-Laws. The standing committees include the following:

- (a) The Committee on Arbitration resolves fee disputes between either an attorney and client or between attorneys. There is no charge to the complainant.

- (b) The Committee on Meetings holds bi-monthly meetings in Buffalo City Court to discuss various legal topics, including any changes in law. The meetings are for the benefit of members and the public.
- (c) The Committee on Judicial Rating and the Judiciary evaluates candidates for judicial office and submits a recommended rating to the Board of Directors.
- (d) The Committee on Grievance investigates complaints of professional misconduct on the part of members and non-members.
- (e) The Committee on Legislation reviews and makes recommendations on proposed federal, state and local legislation.

Among the activities of the other standing committees are admissions, aid to indigent persons, finance, practice and procedures in courts, ethics, public information, speakers, and unlawful practice.

With a few exceptions, the functions of ECBA's standing committees, as described in Article X of its By-Laws, are for the benefit and interest of its members.

5. ECBA sponsored on-going projects, which included the following:

- (a) Assigned counsel. This is a program providing free legal counsel to indigent persons in Erie County.
- (b) Pre-Trial Services. This is an agency providing free assistance to criminal defendants in securing release prior to trial.

- (c) Project Capable. This program provides an attorney for people who do not qualify for the public defender, but who are financially unable to retain an attorney on a normal basis.
- (d) "Tel-Law". This is a series of recorded messages on various topics that give general legal information to the caller.
- (e) "Your Legal Advisor". This is a monthly television program where a member-attorney responds to public inquiries.
- (g) Lawyers in Classroom. This program provides for an ECBA member to instruct in the city school district.
- (h) Lawyer Referral Service. This is a program providing reference service to the public. Member-attorneys pay a fee to be part of this service.

ECBA also sponsored special projects, such as Law Day and the National Public Interest Law Conference.

6. ECBA published pamphlets on such topics as "Buying a Home", "Do I Need a Will" and "Your Rights and the Police", which were available to the public at no cost. These pamphlets were intended to inform and not to advise. They also served as a promotion for the legal profession and for members' business interests.

7. The Sales Tax Bureau used the guidelines of the Internal Revenue Service to determine the status of an organization claiming sales tax exemption, since section 1116(a)(4) of the Tax Law is similar to that of section 501(c)(3) of the Internal Revenue Code.

8. Applicant received Federal exemption as a business league, under section 501(c)(6) of the Internal Revenue Code.

CONCLUSIONS OF LAW

A. That section 1116(a)(4) of the Tax Law provides that the following organizations are exempt from sales or use tax:

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 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.

Applicant's purposes, as set forth in its organizational documents, are not limited to those enumerated in the statute. Moreover, applicant is expressly authorized to engage in activities which further the professional interest of its members. Although applicant engages in many activities which are education or charitable in nature, and such activities are certainly of benefit to the public, a substantial part of its activities are directed toward promoting the legal profession for the benefit of its members. Accordingly, applicant is not operating exclusively for charitable or education purposes within the meaning and intent of section 1116(a)(4) of the Tax Law, or for any other exempt purpose which is set forth in this section. (Matter of the Association of the Bar of the City of New York v. Richard Lewisohn, 34 N.Y.2d 143, 356 N.Y.S.2d 55.)

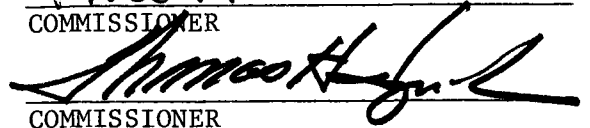
B. That the application of Erie County Bar Association is denied.

DATED: Albany, New York  
AUG 17 1979

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER