

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Monroe-Woodbury Athletic Booster Club :
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of
Sales & Use Tax :
under Article 28 & 29 of the Tax Law
for the Period 8/1/72-8/1/75. :

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 29th day of October, 1980, he served the within notice of Decision by mail upon Monroe-Woodbury Athletic Booster Club, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Monroe-Woodbury Athletic Booster Club
P.O. Box 423
Central Valley, NY 10917
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
29th day of October, 1980.

Deborah A Bank

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

October 29, 1980

Monroe-Woodbury Athletic Booster Club
P.O. Box 423
Central Valley, NY 10917

Gentlemen:

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

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1138 & 1243 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:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
MONROE WOODBURY ATHLETIC BOOSTER CLUB	:	DECISION
	:	
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 September 1, 1972 through	:	
September 1, 1975.	:	

Petitioner, Monroe Woodbury Athletic Booster Club, P.O. Box 423, Central Valley, New York 10917, filed a petition 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 September 1, 1972 through September 1, 1975 (File No. 22696).

On December 7, 1979 the petitioner advised the State Tax Commission in writing that it desired to waive a small claims hearing and to submit the case to the State Tax Commission upon the entire record contained in the file. After due consideration, the State Tax Commission makes the following decision.

ISSUE

Whether petitioner is entitled to a refund of sales taxes paid prior to the date it was granted exempt organization status by the Audit Division.

FINDINGS OF FACT

1. On June 6, 1975, petitioner, Monroe Woodbury Athletic Booster Club, filed an Application for an Exempt Organization Certificate.

2. On July 10, 1975, the Audit Division advised petitioner that its constitution must be amended to include a provision for the dedication of assets upon dissolution before any further consideration can be given to its application. On September 17, 1975, petitioner made such an amendment to its constitution.

3. The Taxpayer Services Division granted petitioner exempt organization status on September 25, 1975.

4. On October 22, 1975, petitioner filed an application for a refund of sales taxes in the amount of \$150.99, covering the period September 1, 1972 through September 1, 1975. Said application was denied by the Audit Division on December 16, 1975 on the grounds that petitioner did not qualify as an exempt organization until September 17, 1975 and as such is not entitled to a refund of sales taxes paid prior thereto.

5. The Taxpayer Services Division has consistently followed Internal Revenue Service Rules and Regulations 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.

CONCLUSIONS OF LAW

A. That section 1116(a)(4) of the Tax Law provides an exemption from sales and use taxes for,

Any corporation, association...organized and operated exclusively for religious, charitable...or educational purposes.

B. That Internal Revenue Regulation 1.501(c)(3)-1 provides that if an organization fails to meet either the organizational test or the operational test, it is not exempt. Subsection (b) of said regulation provides as an organizational test that

(4) Distribution of assets on dissolution. An organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose.

C. That petitioner's organizing documents did not contain a provision insuring that its assets are dedicated for an exempt purpose in the event of dissolution, before September 17, 1975. Accordingly, petitioner was not

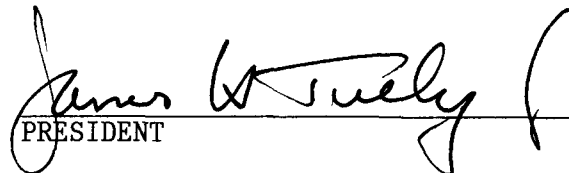
organized exclusively for exempt purposes within the meaning and intent of section 1116(a)(4) of the Tax Law for the period of petitioner's refund application and as such, is not entitled to a refund of sales taxes paid during said period.

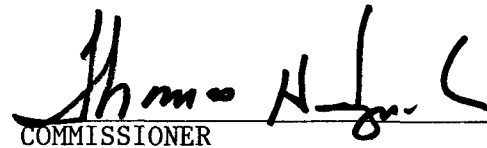
D. That the petition of Monroe Woodbury Athletic Booster Club is denied and the refund denial issued December 16, 1975 is sustained.


DATED: Albany, New York

STATE TAX COMMISSION

OCT 29 1980


PRESIDENT


COMMISSIONER


COMMISSIONER