

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition  
of  
Housing Action Council

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision  
of a Determination or a Refund of Sales Tax under  
Article 28 & 29 of the Tax Law for the Period  
6/74-4/76.

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 21st day of August, 1981, he served the within notice of Decision by certified mail upon Housing Action Council, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Housing Action Council  
180 South Broadway  
White Plains, NY 10605

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  
21st day of August, 1981.

*Carmie D. Hagelund*

*J. Vredenburg*

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

August 21, 1981

Housing Action Council  
180 South Broadway  
White Plains, NY 10605

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

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In the Matter of the Petition :  
of :  
Housing Action Council :  
: AFFIDAVIT OF MAILING  
for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of Sales Tax under :  
Article 28 & 29 of the Tax Law for the Period :  
6/74-4/76. :

\_\_\_\_\_  
State of New York  
County of Albany

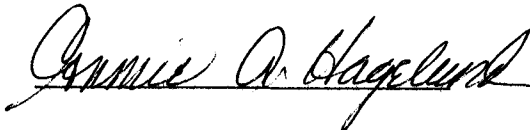
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 14th day of August, 1981, he served the within notice of Decision by mail upon Housing Action Council, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

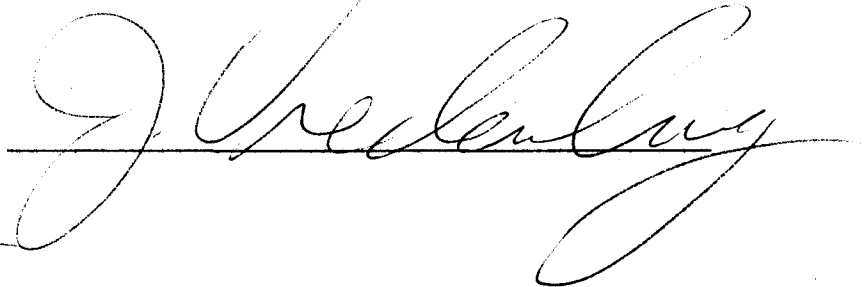
Housing Action Council  
180 South Broadway  
White Plains, NY 10605

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  
14th day of August, 1981.

  
Annie A. Haglund

  
Jay Vredenburg

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

August 14, 1981

Housing Action Council  
180 South Broadway  
White Plains, NY 10605

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) 1139 & 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

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In the Matter of the Petition	:	
	:	
of	:	
	:	
HOUSING ACTION COUNCIL	:	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 June, 1974	:	
through April, 1976.	:	

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Petitioner, Housing Action Council, 33 Church Street, White Plains, New York 10601, 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 June, 1974 through April, 1976 (File No. 16046).

On March 5, 1979, the petitioner advised the State Tax Commission in writing, that it desired to waive a small claims hearing and submitted the case to the State Tax Commission based on the entire record in the file. After due consideration, the State Tax Commission renders the following decision.

ISSUE

Whether petitioner, a tax exempt organization, is entitled to a refund of sales taxes paid prior to its date of incorporation.

FINDINGS OF FACT

1. Petitioner, Housing Action Council, was granted exempt organization status by the Department of Taxation and Finance on February 26, 1976 under certificate number EX 150584.

2. On April 29, 1976, petitioner filed an application for a refund of sales taxes in the amount of \$1,031.48, which represented sales tax paid on various purchases covering the period June, 1974 through April, 1976. On

June 22, 1976, the Audit Division approved a refund of \$405.73 for sales taxes paid after August 11, 1975. The balance of the refund claim, \$625.75 was denied on the grounds that petitioner was not organized until August 11, 1975 and thereby is not entitled to a refund of sales taxes paid prior thereto.

3. At the Board of Directors meeting of Westchester Coalition, Inc. (hereinafter Coalition) held on October 30, 1973, it was resolved that the Housing Action Council be created which would be under the direct auspices of and financed by the Coalition for two years and would then become a separate entity, with its own sources of funding. The Coalition also approved the proposed organizational structure of the Housing Action Council which included fifty members, a chairman, director and several committees. Initially, such persons were to be proposed by the Coalition's Housing Committee and elected by the Board of Directors. The chairperson was appointed on February 27, 1974 and a director was appointed on March 19, 1974 by the Coalition.

As of July 1, 1974, petitioner maintained its own checkbook and other financial records. However, funding was still provided by the Coalition and the petitioner's budget was subject to the Coalition's approval.

Petitioner incorporated on August 11, 1975.

4. The Department of Taxation and Finance issued Westchester Coalition, Inc. an Exempt Organization Certificate on April 7, 1972.

5. The Department of Taxation and Finance has consistently followed Internal Revenue Service rules and regulations to determine the status of an organization claiming sales exemption since section 1116(a)(4) of the Tax Law is similiar 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 the organization must have articles of organization which term includes a trust instrument, corporate charter, articles of association or other written instrument by which an organization is created.

To qualify for exemption, said documents must show that:

- (1) The organization is organized exclusively for, and will be operated exclusively for one or more of the specified exempt purposes;
- (2) No part of its net income will inure to the benefit of private shareholders or individuals;
- (3) It will not, as a substantial part of its activities, attempt to influence legislation;
- (4) It will not participate to any extent in a political campaign for or against any candidate for public office;
- (5) The assets of the organization are permanently dedicated to an exempt purpose.

That petitioner failed to meet the organizational test for the period April 15, 1974 through August 11, 1975 and accordingly, was not organized for exempt purposes within the meaning and intent of section 1116(a)(4) of the Tax Law during said period.

C. That prior to August 11, 1975, petitioner was created and operated as a unit or associated organization of the Westchester Coalition, Inc. That although Westchester Coalition, Inc. was an exempt organization, units, branches

or other organizations associated with a certified exempt organization must obtain their own Exempt Organization Certificate in order to make tax free purchases.

D. That the petition of Housing Action Council is denied and the partial refund denial issued June 22, 1976 is sustained.

DATED: Albany, New York

AUG 14 1981

STATE TAX COMMISSION

*James H. Tully*  
PRESIDENT

*Thomas H. Lynch*  
COMMISSIONER

*Frank R. Koeng*  
COMMISSIONER