

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of  
National Association of Retired & Veteran Railway :  
Employees, Inc., Unit 24, Utica, N.Y. : AFFIDAVIT OF MAILING  
for Redetermination of Exempt Organization Status :  
under Articles 28 and 29 of the Tax Law.

\_\_\_\_\_  
State of New York }  
County of Albany } ss.:

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 26th day of July, 1984, he served the within notice of Decision by certified mail upon National Association of Retired & Veteran Railway Employees, Inc., Unit 24, Utica, N.Y., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

National Association of Retired  
& Veteran Railway Employees, Inc.,  
Unit 24, Utica, N.Y.  
c/o Frank Mazzatti, President  
19 Bayliss Ave.  
Yorkville, NY 13495

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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  
26th day of July, 1984.

David Parchuck

James A. Blacklund  
Authorized to administer oaths  
pursuant to Tax Law section 174

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

July 26, 1984

National Association of Retired &  
Veteran Railway Employees, Inc.,  
Unit 24, Utica, N.Y.  
c/o Frank Mazzatti, President  
19 Bayliss Ave.  
Yorkville, NY 13495

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 of the Tax Law, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law 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  
Law Bureau - Litigation Unit  
Building #9, State Campus  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
NATIONAL ASSOCIATION OF RETIRED AND VETERAN	:	DECISION
RAILWAY EMPLOYEES, INC., UNIT 24, UTICA, N.Y.	:	
	:	
for Redetermination of Exempt Organization	:	
Status under Articles 28 and 29 of the Tax Law.	:	

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Petitioner, National Association of Retired and Veteran Railway Employees, Inc., Unit 24, Utica, N.Y., c/o Frank Mazzatti, 19 Bayliss Avenue, Yorkville, New York 13495, filed a petition for redetermination of exempt organization status under Articles 28 and 29 of the Tax Law (File No. 41821).

A formal hearing was held before Frank Landers, Hearing Officer, at the offices of the State Tax Commission, Building 9, State Campus, Albany, New York, on November 2, 1983 at 1:30 P.M. Petitioner appeared by Frank Mazzatti, president. The Technical Services Bureau appeared by John P. Dugan, Esq. (James Della Porta, Esq., of counsel).

ISSUE

Whether the Technical Services Bureau's denial of the application of the National Association of Retired and Veteran Railway Employees, Inc., Unit 24, Utica, N.Y. for exempt organization status was proper.

FINDINGS OF FACT

1. On January 4, 1982, the petitioner, National Association of Retired and Veteran Railway Employees, Inc., Unit 24, Utica, N.Y. ("NARVRE"), a local unit of the National Association of Retired and Veteran Railway Employees, Inc.

("National Association"), submitted to the Technical Services Bureau an Application for an Exempt Organization Certificate, seeking exemption from sales and use taxes under section 1116(a)(4) of the Tax Law.

2. Petitioner indicated on its application that the purposes for which exempt status is claimed are charitable and educational. The petitioner also indicated on the application that its activities were "social monthly gatherings - get together of old RR friends - protection of railroad benefits - medicare and pensions". The petitioner also submitted in support of its application the following: a statement of activities; a statement of receipts and expenditures; a copy of the Articles of Incorporation of the National Association; and a copy of the Bylaws of the National Association.

3. By letter dated January 19, 1983, the Technical Services Bureau advised petitioner that it failed to qualify for exemption from sales and use taxes. The letter stated, in pertinent part, the following:

"The information presented discloses that, although some of your organization's activities may be for exempt purposes, it is primarily organized and operated to promote the social and economic interest of its members. Such purposes are not among those specified in the statute for which sales tax exemption may be afforded."

4. As a local unit of the National Association, the petitioner, NARVRE, or other local units will not adopt or enforce Bylaws other than appear in the Constitution of the National Association. Article II of the Bylaws of the National Association provides, in pertinent part, the following:

"The purpose of this association shall be to unite the Retired and Veteran Railway Employees into an organization dedicated solely to the advancement of the interest of its members, with special regard to their rights under the U.S. Railroad Retirement Act, and to promote the social well-being of all its members, working in close harmony with the Standard Railroad Labor Organization and other Senior Citizens Groups introducing or supporting Legislation beneficial to our Organization."

5. The NARVRE is an organization of retired railway employees whose membership is restricted to those retirees covered by the Railroad Retirement Act. The organization presently has 68 members who gather once each month, on the second Thursday, except during June, July and August. The meetings, which center around a buffet lunch at noon, are primarily social gatherings; however, discussions are had concerning the rights of members with respect to their retirement benefit. In addition, films are exhibited. According to petitioner's representative, during the 27 meetings held over the past three years, the films have been shown approximately three times per year and approximately five members have raised questions concerning their rights.

6. The members pay dues to the petitioner of \$5.00 per year, \$3.00 of which is forwarded to the National Association in Kansas City and \$2.00 of which is kept in the petitioner's treasury. Members also pay for the cost of their meals at the monthly meetings which usually average around \$4.00 each.

7. With regard to petitioner's charitable activities, at the monthly meeting a collection is taken up, the proceeds from which are distributed to national and local charities which have solicited petitioner.

8. Petitioner's statement of activities provided:

"We are Railroad retirees and formed this group for social gatherings and to visit for old times sake. We have a light lunch and we enjoy this being together each month for an hour or so..."

#### CONCLUSIONS OF LAW

A. That section 1116(a)(4) of the Tax Law provides an exemption from the sales and compensating use tax 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 order to qualify for exemption, an organization

must prove that it is both organized and operated exclusively for one or more exempt purposes. If an organization fails to meet either the organizational test or the operational test, it is not exempt [20 NYCRR 529.7(b)(2)].

B. That an organization is organized exclusively for one or more exempt purposes only if its organizing documents:

"(a) limit the purpose of such organization to one or more exempt purposes; and

(b) do not expressly empower the organization to participate, other than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes." 20 NYCRR 529.7(c)(1)(i).

C. That the operational test relates solely to an organization's activities as indicated by the following:

"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... 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).

D. That notwithstanding the fact that some of petitioner's activities are desirable and worthwhile for its members, it is clearly evidenced from petitioner's bylaws that it is not organized exclusively for exempt purposes. It is also clear that petitioner is not operated exclusively for exempt purposes. Petitioner is a social organization whose limited activities are directed toward the benefit of its members.

E. That the petition of the National Association of Retired and Veteran  
Railway Employees, Inc., Unit 24, Utica, N.Y. is denied.

DATED: Albany, New York

STATE TAX COMMISSION

**JUL 26 1984**

*Rodrick W. Clem*  
PRESIDENT

*Francis R. Koenig*  
COMMISSIONER

*W. J. Smith*  
COMMISSIONER

**RECEIPT FOR CERTIFIED MAIL**

Unilateral ~~Employer~~ <sup>Employee</sup> ~~Employment~~ <sup>Employment</sup>

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Special Delivery Fee

Restricted Delivery Fee

Return Receipt Showing  
to whom and Date Delivered

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PS Form 3800, Feb. 1982