

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
New York City Elementary School Principals Assoc. :
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Sales & Use Tax :
under Article 28 & 29 of the Tax Law. :

AFFIDAVIT OF MAILING

State of New York :

ss.:

County of Albany :

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 22nd day of October, 1985, he served the within notice of Decision by certified mail upon New York City Elementary School Principals Assoc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

New York City Elementary School Principals Assoc.
c/o Eustace S. Forde, President
500 Macon St.
Brooklyn, NY 11233

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
22nd day of October, 1985.

David Parchuck

Annex P. Haggard
Authorized to administer oaths
pursuant to Tax Law section 174

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

October 22, 1985

New York City Elementary School Principals Assoc.
c/o Eustace S. Forde, President
500 Macon St.
Brooklyn, NY 11233

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

In the Matter of the Petition	:	
	:	
of	:	
	:	
NEW YORK CITY ELEMENTARY SCHOOL	:	DECISION
PRINCIPALS ASSOCIATION	:	
	:	
for Redetermination of Exempt Organization	:	
Status under Articles 28 and 29 of the Tax Law.	:	

Petitioner, New York City Elementary School Principals Association, 500 Macon Street, Brooklyn, New York 11233, filed a petition for redetermination of exempt organization status under Articles 28 and 29 of the Tax Law (File No. 56078).

A hearing was held before Daniel J. Ranalli, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 9, 1985 at 1:15 P.M. Petitioner appeared by Eustace Forde and Joseph Mehlman. The Audit Division appeared by John P. Dugan, Esq. (Lawrence A. Newman, Esq., of counsel).

ISSUE

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

FINDINGS OF FACT

1. On or about November 15, 1983, petitioner, New York City Elementary School Principals Association, filed an Application For An Exempt Organization Certificate. On July 11, 1984, the Audit Division advised petitioner that it did not qualify for an exemption from sales tax since it was not organized and operated exclusively for one or more of the purposes specified in section 1116(a)(4) of the Tax Law.

2. With respect to the organizational test required by section 1116(a)(4), the July 11, 1984 letter stated:

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

1. Your Constitution and Bylaws lack the required non-inurement and restrictive legislation provisions.
2. The dissolution provision contained in Article X, sections 1 and 2 of your Constitution is not acceptable because it fails to limit the distribution of your assets, upon dissolution, solely for one or more of the exempt purposes specified in section 1116(a)(4) of the Sales Tax Law."
3. The dissolution provision of petitioner's constitution dated June,

1979 provided as follows:

"ARTICLE X - DISTRIBUTION OF FUNDS IN THE EVENT OF DISSOLUTION OF NYCESPA

Section 1. In the event of the dissolution of NYCESPA, its assets shall be liquidated and its debts paid. If funds remain, they shall be refunded to those Active members who were in good standing for the last full fiscal year prior to the date of dissolution and who are Active members in good standing at the time of the dissolution.

Section 2. The amount of refund to each of these members in good standing shall be the product of his/her paid dues for the last full fiscal year prior to the date of dissolution and the ratio of remaining funds to the total dues collected in that fiscal year."

In April, 1983, petitioner amended its constitution, in part, as follows:

"ARTICLE X - DISTRIBUTION OF FUNDS IN THE EVENT OF DISSOLUTION OF NYCESPA

In the event of the dissolution of NYCESPA, its assets shall be liquidated and its debts paid. If funds remain they will be distributed for an exempt purpose specified in the Sales and Use Tax law, or to the Federal Government or to New York State or to a local government body within New York for public purpose.

- ARTICLE XI - No part of the Net Income of this Organization will inure to the Benefit of Private Shareholders, Members or Individuals.
- ARTICLE XII - The Organization Will Not, as a Substantial Part of its Activities Attempt to Influence Legislation.
- ARTICLE XIII - The Organization Will Not Participate to Any Extent in a Political Campaign for or Against any Candidate for Public Office."

4. Petitioner's constitution sets forth the purposes of the organization as follows:

"ARTICLE II - OBJECTIVES - TO PLAY A LEADERSHIP ROLE IN AMERICAN EDUCATION:

- Section 1. By developing, organizing and implementing seminars, conferences, forums, etc., in order to provide continuing education for Elementary School Principals to aid and assist them in keeping abreast of new dimensions in education and to aid and assist them in maintaining and sharpening their skills as educators and educational leaders.
- Section 2. By developing, organizing and implementing educational programs geared to parents of elementary school children to enhance their sophistication of the parents role in the education process.
- Section 3. By developing, organizing and implementing educational programs geared to elementary school teachers, aides, and other employees to sharpen educational skills and to teach a teamwork approach to the delivery of educational services.
- Section 4. By doing research and contributing to the body of knowledge under the general rubric of education.
- Section 5. By participating in a leadership capacity with other professional organizations in the establishment of educational programs and policies to improve and enhance education."

5. Petitioner's membership is limited to elementary school principals. Petitioner's Executive Board, consisting of 32 members, meets monthly after school to discuss a broad range of topics impacting on education. There are also several committees which meet regularly for more specialized discussions.

These committees include: Communication Arts, Curriculum, Gifted, Grievance, Pupil Personnel Services, School Buildings, School Improvement, Salary, Special Education and Testing. General meetings involving all of petitioner's members are held three or four times a year. At the general meeting, a speaker is usually invited to address the members on a topic of interest to school principals.

6. Petitioner and its members also participate in a variety of other activities in furtherance of their objectives. Petitioner's members have acted as consultants to the Board of Education; petitioner submits curriculum proposals to the State Department of Education; petitioner presents an award each year to a nonmember individual who has made an outstanding contribution to education; and petitioner publishes a newsletter which is distributed primarily to individuals and organizations involved in education. Petitioner also sends a representative to Council of Supervisors and Administrators ("CSA") meetings. CSA is the principals' union. According to several of petitioner's newsletters, one of petitioner's goals was to obtain a single salary for all principals by working through CSA. Petitioner also presents awards annually to outstanding graduating students of the elementary school system. Other than an annual convention at which a luncheon is served, petitioner does not have any activities of a social nature.

7. Petitioner has neither applied for nor received an exemption from Federal income tax under the Internal Revenue Code.

CONCLUSIONS OF LAW

A. That section 1116(a)(4) of the Tax Law provides:

"§1116. Exempt organizations

(a) Except as otherwise provided in this section, any sale or amusement charge by or to any of the following or any use or occupancy by any of the following shall not be subject to the sales and compensating use taxes imposed under this article:

* * *

(4) 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 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, (except as otherwise provided in subsection (h) of section five hundred one of the United States internal revenue code of nineteen hundred fifty-four, as amended), 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. That 20 NYCRR 529.7(d)(2) provides:

"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 specified in section 1116(a)(4) of the Tax Law and described in subdivision (e) of this section. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose."


C. That inasmuch as petitioner amended its constitution to meet the objections expressed by the Audit Division, it meets the organizational test required of an exempt organization. Petitioner's activities, however, fail to meet the operational test. Although many of petitioner's activities ultimately have an impact on education, a substantial portion of them are designed primarily to improve the profession of school principal and are of concern only to a school principal; for example, the single salary issue and such committees as School Buildings and Grievance. These activities serve to improve the efficiency of the school principal, but they are not educational in nature. Therefore, since petitioner carries on substantial noneducational activities, it is not an exempt organization within the meaning and intent of section 1116(a)(4) of the Tax Law.


D. That the petition of New York City Elementary School Principals Association is denied.


DATED: Albany, New York

STATE TAX COMMISSION

OCT 22 1985


PRESIDENT


COMMISSIONER


COMMISSIONER

P 153 387 594

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

* U.S.G.P.O. 1984-446-014

PS Form 3800, Feb. 1982

Sent to	<i>Port City Elementary School</i>
Street and No.	<i>Port City Ave</i>
City, State and ZIP Code	<i>Port City, N.C. 28583</i>
Postage	<i>5.00</i>
Certified Fee	<i>0.40</i>
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	
Return receipt showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	