

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
721st Railway Operating Battalion :
Veterans Association : AFFIDAVIT OF MAILING
for Redetermination of Exempt Organization :
Status under Article(s) 28 & 29 of the Tax Law.

State of New York :

ss.:

County of Albany :

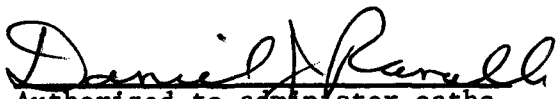
David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 17th day of June, 1986, he/she served the within notice of Decision by certified mail upon 721st Railway Operating Battalion Veterans Association the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

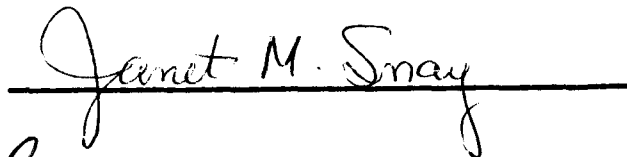
721st Railway Operating Battalion Veterans Association
41 Paxwood Rd.
Delmar, NY 12054

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
17th day of June, 1986.


Authorized to administer oaths
pursuant to Tax Law section 174



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

June 17, 1986

721st Railway Operating Battalion Veterans Association
41 Paxwood Rd.
Delmar, NY 12054

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
Audit Evaluation Bureau
Assessment Review Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2086

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 :
721ST RAILWAY OPERATING :
BATTALION VETERANS ASSOCIATION : DECISION
for Redetermination of Exempt Organization :
Status under Articles 28 and 29 of the Tax Law.

Petitioner, 721st Railway Operating Battalion Veterans Association, 41 Paxwood Road, Delmar, New York 12054, filed a petition for redetermination of exempt organization status under Articles 28 and 29 of the Tax Law (File No. 61004).

A hearing was held before Jean Corigliano, Hearing Officer, at the offices of the State Tax Commission, W.A. Harriman Campus, Albany, New York on January 21, 1986 at 1:15 P.M. Petitioner appeared by James V. Marotta, past-President. The Audit Division appeared by John P. Dugan, Esq. (Laura M. Nath, Esq., of counsel).

ISSUE

Whether petitioner qualifies for exempt organization status under Tax Law, section 1116(a)(5).

FINDINGS OF FACT

1. On March 12, 1985, petitioner, 721st Railway Operating Battalion Veterans Association, filed an Application For an Exempt Organization Certificate. By letter dated April 17, 1985, the Audit Division advised petitioner that it did not qualify for an exemption from sales tax because it was not organized in New York State as required by section 1116(a)(5) of the Tax Law.

2. Petitioner is a national organization of army veterans which was founded in Rochester, New York in 1950. Membership is limited to those persons who served on active duty with the 721st Railway Operating Battalion during World War II. Over 70 of the petitioner's approximately 220 members reside in New York State.

3. Petitioner's Constitution and By-Laws set forth its purpose as follows:

"To afford the members, their families and friends an opportunity to assemble for a few days each year, as decided, in order to enjoy good fellowship, sightseeing, food and refreshments."

4. In accordance with its stated purpose, petitioner's members hold an annual reunion, usually during the month of September. The reunion location is rotated throughout the country to more easily enable members in different states to attend. A plenary meeting is held at each reunion at which, in addition to other business, a president and secretary-treasurer are elected to one year terms. Generally speaking, these officers will reside in that area of the country where the next annual reunion will be held. For example, the next reunion will be in Orlando, Florida, and the current president and secretary-treasurer reside in Orlando.

5. Petitioner has no permanent physical location, and it is not incorporated under the laws of any state. On its application for exemption, petitioner's address was identified as RD #1, Box 120, Bechtelsville, Pennsylvania. This is the address of petitioner's recording secretary. The application was prepared by James V. Marotta, a resident of New York State, who was identified on the application as petitioner's contact person.

6. On September 14, 1985, an Albany Chapter of the 721st Railway Operating Battalion Veteran's Association was formed. At the hearing, Mr. Marrotta asked that petitioners application be deemed to be the application of the Albany

Chapter. The latter has no formal organizing documents but relies solely on the documents of the national organization.

CONCLUSIONS OF LAW

A. That section 1116, subdivision (a), paragraph (5) of the Tax Law provides an exemption from the sales and compensating use taxes imposed under Article 28 to "[a] post or organization of past or present members of the armed forces of the United States..." which is "(A) organized in this state, (B) at least seventy-five percent of the members of which are past or present members of the armed forces of the United States..., and (C) no part of the net earnings of which inures to the benefit of any private shareholder or individual."


B. That regulations promulgated by the State Tax Commission interpret the phrase "organized in this state" to mean "that (i) the organization is incorporated under the laws of New York State or, if unincorporated, it is created under a formal organizing document and (ii) is physically located in this State." Petitioner is neither incorporated nor physically located in New York State, and therefore, it does not qualify for exempt status. Whether or not petitioner's Albany Chapter would qualify for exemption cannot be determined on the basis of petitioner's application.

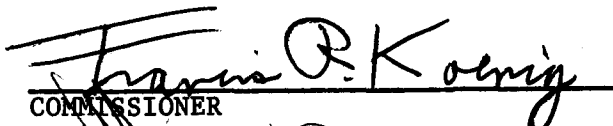
C. That the petition of 721st Railway Operating Battalion Veterans Association is denied.

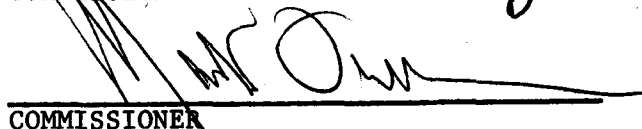
DATED: Albany, New York

STATE TAX COMMISSION

JUN 17 1986


PRESIDENT


COMMISSIONER


COMMISSIONER