

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Woodhaven Residents Block Assoc., Inc. : AFFIDAVIT OF MAILING
for Redetermination of Exempt Organization :
Status under Articles 28 and 29 of the Tax Law. :
:

State of New York :

ss.:

County of Albany :

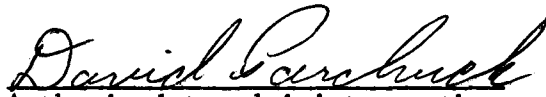
David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 20th day of November, 1986, he/she served the within notice of Decision by certified mail upon Woodhaven Residents Block Assoc., Inc. the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

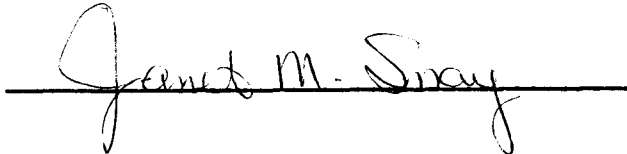
Woodhaven Residents Block Assoc., Inc.
84-20 Jamaica Avenue
Woodhaven, NY 11421

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
20th day of November, 1986.


Authorized to administer oaths
pursuant to Tax Law section 174



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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 20th day of November, 1986, he served the within notice of Decision by certified mail upon Gary M. Darche, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Gary M. Darche
125-10 Queens Blvd.
Kew Gardens, NY 11415

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 representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
20th day of November, 1986.

David Parchuck
Authorized to administer oaths
pursuant to Tax Law section 174

Janet M. Snay

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

November 20, 1986

Woodhaven Residents Block Assoc., Inc.
84-20 Jamaica Avenue
Woodhaven, NY 11421

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

Petitioner's Representative:
Gary M. Darche
125-10 Queens Blvd.
Kew Gardens, NY 11415

STATE OF NEW YORK

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In the Matter of the Petition

of

WOODHAVEN RESIDENTS BLOCK ASSOCIATION, INC.

for Redetermination of Exempt Organization
Status under Articles 28 and 29 of the Tax
Law.

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DECISION

Petitioner, Woodhaven Residents Block Association, Inc., 84-20 Jamaica Avenue, Woodhaven, New York 11421, filed a petition for redetermination of exempt organization status under Articles 28 and 29 of the Tax Law (File No. 64129).

A hearing was held before Joseph W. Pinto, Jr., Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 17, 1986 at 2:45 P.M. Petitioner appeared by Gary M. Darche, Esq. The Audit Division appeared by John P. Dugan, Esq., (Anne W. Murphy, Esq., of counsel).

ISSUE

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

FINDINGS OF FACT

1. On or about February 21, 1985, petitioner, Woodhaven Residents Block Association, Inc. (hereinafter "WRBA"), submitted to the Audit Division an application for an exempt organization certificate, seeking exemption from sales and compensating use taxes under Tax Law § 1116(a)(4).

2. By letter dated August 5, 1985, the Audit Division denied WRBA's application for failure to meet both the organizational and operational criteria for exemption. The letter stated, in pertinent part:

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

1. The purposes specified in Article 2, (b) of your client's Certificate of Incorporation are primarily civic, social and political in nature rather than charitable and/or educational within the above definition of those terms. Such purposes are not among those specified in the statute for which sales tax exemption may be afforded.
2. Your client's Certificate of Incorporation lacks the required non-inurement, restrictive legislation and dissolution provisions.

* * *

Your client does not meet the operational test for exemption. The information presented discloses that, although some of your client's activities may be in furtherance of exempt purposes, it is primarily operated for civic and social welfare purposes, similar to those organizations described in the above revenue rulings. Your client's activities consist of improving street lighting, street conditions, traffic, sanitation, improvements of the "J" line, tree planting, clean up programs, picnic and dances for area residents. While such activities may serve a civic purpose, it does not serve a charitable or other exempt purpose specified in the statute."

3. WRBA was incorporated on March 29, 1972 pursuant to section 402 of the Not-for-Profit Corporation Law ("NFPCL") as a "type A" corporation (NFPCL §201[b]). The Certificate of Incorporation states that it is a corporation defined in section 102(a)(5) of the Not-for-Profit Corporation Law and that it was formed "to maintain and foster in the City of New York, County of Queens and State of New York an interest in civic, social and political affairs, and to inculcate in its members the highest ideals and conception of Americanism" (emphasis added).

4. WRBA's By-Laws, Section VIII, state that the concern of the corporation "shall be for the welfare of the people at large ... of a civic nature involving its citizens generally" (emphasis added).

5. WRBA provides various services to its community, that geographic area with the postal zip code 11421. The area encompasses approximately 160 blocks in the Woodhaven area of the borough of Queens. There are approximately 6,000 members including store owners, homeowners and apartment dwellers.

6. WRBA is responsible for the creation and maintenance of such programs as security patrols in the nature of a community watch program, a school patrol insuring the safety of children on their way to and from school, the maintenance of Forest Park and a community library, senior citizen shopping, check cashing and tax preparation programs, a "watchdog" program with regard to the "J" train of the New York City transit system, and publication of a monthly newsletter called "The Voice of Woodhaven" containing various committee reports, news items, advertising, meeting notices and coming events.

7. WRBA does not endorse political candidates and officers and directors are prohibited from being actively involved in political parties or local district political clubs.

8. WRBA has received various grants from the State of New York which were used to purchase neighborhood watch signs, staff their office and fund office expenses and create the neighborhood security patrol.

9. WRBA makes contributions to charitable organizations such as churches and a volunteer ambulance corps. Petitioner also presents programs for the benefit of its constituents which deal with topics of interest to the community.

10. In petitioner's application for exempt organization status it listed the following agenda for the 1984 meetings:

"January 1 - Installation of officers - open forum for members in attendance - refreshments.

February 2 - MTA The Queens Option How it affects Woodhaven - refreshments.

March 3 - N.Y. Telephone - Divestiture - What it means to you! - refreshments.

April 4 - Residential Security - Your Home and Your Community 102nd Pct. - refreshments.

May 5 - Hon. Carol Bellamy - Guest speaker

June 6 - Committee Reports - Local Real Estate Information Night.

July - August - no meetings.

September 7 - Drug and Alcohol Abuse - Its Affect on our Children and our Community. Representative from Frank Costello's Outreach Project - refreshments.

October 8 - Candidates Night - All candidates running for office - Forum - refreshments.

November 9 - Election of WRBA Officers - Medicaid and Medicare Representative - refreshments.

December 10 - No meeting."

11. WRBA also stated in its application for exempt organization status it sponsors various events for the residents' enjoyment, e.g. dances and picnics. It addresses civic interests like abandoned buildings, tax assistance, current real estate issues, securing better services from libraries, schools, hospitals and parks and serving as a "sounding board" for local politicians.

12. In conjunction with its application, petitioner submitted a self-described balance statement for the period ended December 31, 1984.

ASSETS

Membership Dues	\$ 5,496.00
Newsletter Advertisers	4,476.00
Donations	215.00
50/50	219.00
Tot Finder's Decals	25.50
Tfr. from MM a/c to Checking a/c	4,000.00

Cash in Bank Savings	574.64
Cash in Bank Money Market	1,379.71
Bank Interest Checking	65.56
Bank Interest Savings	18.71
Bank Interest Money Market	144.00
Dance Receipts	6,304.00
Picnic Receipts	236.00
Total Current Assets	<u>\$ 23,154.12</u>

LIABILITIES AND CAPITAL

CURRENT LIABILITIES

Rent	\$ 2,200.00
Electricity	588.52
Telephone	1,975.12
Newsletter/Printing	5,280.43
Postage	310.00
Newsletter/Delivery	739.11
Tot Finders	27.00
Office Supplies/Petty Cash	100.00
P.O. & Safety Deposit Box	47.89
Refreshments	221.05
Sunshine	362.53
Lion's Club Dues	120.00
Donations	1,678.00
Refund Ad n/l	56.00
Misc. Purchases	103.06
Printing	323.90
Legal Fees	100.00
Hall Rental	100.00
Insurance	402.19
Office Equipment	847.21
Office Renovation	2,750.00
Dance Expenses	3,041.53
Misc. Expenses	13.13
Total Liabilities	<u>\$ 21,386.67</u>

13. Article IV, Section IX of WRBA's By-Laws state that, upon dissolution, all the business, property and assets of the corporation shall be distributed to a non-profit charitable corporation, municipal corporation or corporation as may be selected by the Board of Directors. It is expressly stated that the intent is that the business, property and assets will be devoted to a non-profit charitable purpose in Woodhaven.

CONCLUSIONS OF LAW

A. That Tax Law § 1116(a)(4) provides an exemption from the sales and compensating use taxes imposed under Article 28 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, 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)". In ascertaining whether an organization is organized exclusively for one or more of the enumerated exempt purposes, the focus is on the provisions of the organizing documents. The documents must limit the purposes of the organization to one or more exempt purposes and cannot expressly empower the organization to participate, other than as an insubstantial part of its activities, in activities which are not in furtherance of one or more exempt purposes (20 NYCRR 529.7[c][1][i]). On the other hand, in determining whether the organization is operated exclusively for one or more exempt purposes, the focus is on the organization's activities. Nearly all of its activities must accomplish one or more exempt purposes; or stated in a different way, an organization will not be regarded as exempt if more than an insubstantial part of its activities is not in furtherance of an exempt purpose (20 NYCRR 529.7[d][2]; Front Runners New York, State Tax Commission, February 18, 1986).

B. That 20 NYCRR § 529.7 (e)(1)(ii) and (v) define "charitable" and "educational" for purposes of Tax Law § 1116(a)(4) as follows:

(ii) Charitable. The term charitable includes: relief of the poor, distressed, or underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments, or works; lessening the burdens of government; and promotion of social welfare by organizations designed to accomplish any of the above purposes, or to lessen neighborhood tensions; to eliminate prejudice and

discrimination; to defend human and civil rights secured by law; or to combat community deterioration and juvenile delinquency.

(v) Educational shall mean the instruction or training of the individual for the purpose of improving or developing his capabilities or the instruction of the public on subjects useful to the individual and beneficial to the community."

C. That petitioner was incorporated under Not-for-Profit Corporation Law § 201(b) as a "Type A" not-for-profit corporation with its stated purposes being civic, social and political in nature, not charitable or educational.

D. That petitioner's certificate of incorporation does not satisfy the organizational test set forth in Tax Law § 1116(a)(4) in that none of the enumerated exempt purposes are set forth therein. Further, petitioner's operations are not exclusively educational and/or charitable as these terms are defined in the regulations at 20 NYCRR § 529.7(e)(1)(ii) and (v), set forth above. The balance statement for the period ended December 31, 1984 reveals receipts for a dance which constitute over 28% of total "assets" and the expenditure for said dance was in excess of 14 percent of the total for the period. Such a social event can not be considered an insubstantial part of petitioner's activities .

E. That petitioner's programs are administered for the benefit of a specific group of persons and the enhancement of their neighborhood and not the general public.

C. That the petition of Woodhaven Residents Block Association is hereby denied.

DATED: Albany, New York

NOV 20 1986

STATE TAX COMMISSION

Rodriguez
PRESIDENT

Francis R. Kolmig
COMMISSIONER

Mark J. [unclear]
COMMISSIONER