

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition :

of :

FARMINGDALE FAMILY OF RETIREES : DECISION

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

Petitioner Farmingdale Family of Retirees, Van Cott Avenue, Farmingdale, New York 11735, filed an exception to the determination of the Administrative Law Judge issued on March 29, 1990 with respect to its petition for redetermination of exempt organization status under Articles 28 and 29 of the Tax Law (File No. 806359). Petitioner appeared by Seymour Kopilow. The Division of Taxation appeared by William F. Collins, Esq. (Michael J. Glannon, Esq., of counsel).

Both petitioner and the Division filed briefs. Petitioner's request for oral argument was denied.

After reviewing the entire record in this matter, the Tax Appeals Tribunal renders the following decision.

ISSUE

Whether petitioner is exempt from tax as an educational organization under Tax Law § 1116(a)(4).

FINDINGS OF FACT

We find the facts as determined by the Administrative Law Judge and such facts are stated below.

Petitioner, Farmingdale Family of Retirees ("Farmingdale"), was organized in January 1986 by former employees of the Farmingdale school system. All former employees are

presumed to be members of the organization unless a desire to be excluded is specifically expressed.

The purpose of Farmingdale is stated in its constitution as follows:

"The Farmingdale Family of Retirees is a nonprofit, social, cultural, and educational organization for all retired employees of the Farmingdale Public Schools.... The purpose of the organization is to maintain and perpetuate among the retirees the personal, educational, and professional associations and contacts originally established during many years of service within the Farmingdale community."

In an announcement dated January 2, 1986, advertising Farmingdale's first meeting, the following reasons for organizing the retirees of the Farmingdale School District were given:

"-to keep in touch and inform each other about news of the district (including retirement dinners).--To keep informed about health insurance....--To give retirees advice as it relates to our pensions and social security."

Farmingdale is conducted by four elected officers along with an executive committee which consists of members "who volunteer to attend any scheduled executive meeting." In addition, the organization is provided with meeting facilities, recording services, printing supplies, and service and mailing privileges by the Farmingdale Union Free School District Number 22.

Farmingdale does not require its members to pay dues but rather derives its income by adding a small surcharge to the costs of its luncheons and trips. Almost all its expenditures are spent on these luncheons and trips. In addition, Farmingdale's constitution does not provide for the disposition of funds upon dissolution. While petitioner's witnesses asserted that an amendment had been made to provide that any existing funds upon dissolution would go to the school district, no such amendment has been submitted.

Petitioner has held luncheon meetings several times per year either on school property or in private banquet facilities. Each meeting has sponsored one or more speakers including officials from the school district, state government and the retirement system. Subjects discussed at these luncheons include health insurance, laws or bills affecting retirees and pension supplements.

Other activities of petitioner have included circulating a magazine article on travel, encouraging mammography exams, and publicizing temporary job and volunteer opportunities within the school district. In addition, petitioner has sponsored bus trips to West Point, Hyde Park and the Vanderbilt Mansion.

In March 1987 and March 1988, Farmingdale publicized bus trips to Albany for the purpose of lobbying for school and retirement legislation. These trips were funded by the school district and approximately 11 of petitioner's 400 members participated in the event.

On March 18, 1988, petitioner filed an application pursuant to 20 NYCRR 529.1(j)(2) for an exemption from sales and use taxes as an association organized and operated exclusively for educational purposes under Tax Law § 1116(a)(4). The application was denied by the Taxpayer Assistance Bureau of the Division of Taxation in a letter dated August 22, 1988. The denial was based upon the failure of petitioner's constitution to dedicate its assets to an exempt purpose upon dissolution and the failure of its purpose to be exclusively educational, and because its operation was not primarily educational but was, rather, social. Moreover, the Bureau asserted that the organization is operated substantially for the benefit of its members and emphasized its past lobbying activities.

On November 23, 1988, Farmingdale filed a petition pursuant to Tax Law § 2008 protesting the denial of the application for the exempt organization certificate (see, 20 NYCRR 529.1[a][4]).

OPINION

In his determination below, the Administrative Law Judge found that petitioner was not organized and operated exclusively for religious, charitable, or educational purposes. Therefore, the Administrative Law Judge concluded that petitioner was not a tax exempt organization within the meaning and intent of § 1116(a)(4) of the Tax Law.

On exception, petitioner argues that, in fact, it was organized and operated for an educational purpose. Petitioner contends that the goal of the organization is "to educate retirees to adjust

and advance the objectives of retirement and maintain and upgrade the quality of life" (Petitioner's Exception).

The Division of Taxation argues that while the overall purpose for which petitioner was organized is laudable, petitioner is not an exempt organization for purposes of the sales tax because it is organized and operated for a social purpose, which is not a qualifying purpose.

We agree with the determination of the Administrative Law Judge.

Section 1116(a)(4) of the Tax Law exempts certain organizations from the imposition of sales and use tax:

"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 . . ." (emphasis added).

Section 529.7(e)(1)(v) of the sales and use tax regulations provides:

"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" (20 NYCRR 529.7[e][1][v]).

In order to determine whether an organization was organized for an exempt purpose, we first examine § 529.7(c)(1) of the sales and use tax regulations which elaborates on the organizational test of the statute. The regulation provides that an organization is deemed to be organized exclusively for one or more exempt purposes only if the purposes of the organization, as set forth in its articles of incorporation or constitution, are limited to one or more exempt purposes (20 NYCRR 529.7[c][1][i]). If the articles of incorporation or its constitution expressly empower it to carry on any purposes other than exempt purposes, such corporation does not meet the organizational test (20 NYCRR 529.7[c][1][iii]).

Petitioner's constitution states the purpose of its organization as follows:

"The purpose of the organization is to maintain and perpetuate among the retirees the personal, educational, and professional associations and contacts originally established during many years of service within the Farmingdale Community."

Although petitioner claims that its purpose is solely educational, it is clear from its constitution that its purpose is primarily social.

In a case under the similar provision of § 501(c)(3) of the Internal Revenue Code, Alumnae Chapter Beta of Clovia v. Commr. (T.C. Memo 1983-303, 46 TCM 297), the group that sought a tax exempt status was an organization of women who were alumnae of a college sorority. The general purposes of this women's group, as set forth in their articles of incorporation, were to promote sociability and good fellowship among college women and to foster continuing friendship and cooperation between members of the active chapter of Beta of Clovia and the alumnae association (the petitioner) (Alumnae Chapter Beta of Clovia v. Commr., supra). This purpose was found by the court to place emphasis on the social aspect of the organization rather than the educational aspect. Accordingly, the Alumnae Chapter Beta of Clovia was disqualified from being classified as a tax exempt organization.

Furthermore, § 529.7(c)(3) of the regulations provides that in order for an organization to qualify as organized for an exempt purpose, its assets must be distributed to an exempt organization upon its dissolution (20 NYCRR 529.7[c][3]). Petitioner's constitution fails to distribute its assets in this way. Therefore, petitioner fails the organizational test as set forth in § 529.7(c) of the sales and use tax regulations.

Petitioner contends that its constitution was, in fact, amended so that its assets were to be distributed upon dissolution to the Farmingdale School District. Petitioner claims that documentary evidence of such amendment was submitted to the Division of Taxation and Finance, prior to the administrative hearing, when petitioner sought a tax exempt classification. The Division denies receipt of such evidence. Accordingly, the Administrative Law Judge left open the record of the hearing in order to allow petitioner to submit a copy of the amendment to its constitution within 30 days from the date of the hearing. Petitioner failed to submit a copy of its evidence proving the existence of such an amendment within the 30 day time limit set by the Administrative Law Judge. Therefore, the record was closed to any new evidence after the 30 day period had expired. Petitioner then submitted a copy of the amendment in question with its exception to the Administrative Law Judge's determination. Since the record had already been

closed, petitioner is not now at liberty to introduce new evidence (see, Matter of Ronnie's Suburban Inn, Tax Appeals Tribunal, May 11, 1989).

In addition to failing the organizational test set forth in the regulations, petitioner also fails to qualify as a tax exempt organization under the "operational test" since it does not operate exclusively for educational purposes.

Section 529.7(d) of the regulations provides that the "operational test" relates solely to an organization's activities:

"(2) 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 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" (20 NYCRR 529.7[d][2]).

As demonstrated by the evidence submitted at the hearing, petitioner held various social functions including luncheons, an annual barbecue and sightseeing tours. Even if some of the functions sponsored by petitioner were educational, petitioner has failed to establish that no "more than an insubstantial part of its activities" are social in nature (20 NYCRR 529.7[d][2]; see, Matter of Waverly Senior Citizens Club, State Tax Commn., Sept. 26, 1986).

Therefore, petitioner is found not to be organized and operated exclusively for an exempt purpose and, thus, does not qualify as a tax exempt organization pursuant to § 1116(a)(4) of the Tax Law.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of petitioner Farmingdale Family of Retirees is denied;
2. The determination of the Administrative Law Judge is affirmed; and

3. The petition of Farmingdale Family of Retirees is denied.

DATED: Troy, New York
November 23, 1990

/s/John P. Dugan
John P. Dugan
President

/s/Francis R. Koenig
Francis R. Koenig
Commissioner

/s/Maria T. Jones
Maria T. Jones
Commissioner