

STATE OF NEW YORK
TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
NATIONAL FEDERATION OF ITALIAN-AMERICAN SOCIETIES, INC.	:	DECISION
for Redetermination of Exempt Organization Status under Articles 28 and 29 of the Tax Law.	:	

Petitioner National Federation of Italian-American Societies, Inc., 7406 New Utrecht Avenue, Brooklyn, New York 11204, filed an exception to the determination of the Administrative Law Judge issued on January 25, 1991 with respect to its petition for redetermination of exempt organization status under Articles 28 and 29 of the Tax Law (File No. 807684). Petitioner appeared by Arnaldo Ferraro and Josephine Frediani. The Division of Taxation appeared by William F. Collins, Esq. (Angelo A. Scopellito, Esq., of counsel).

Petitioner filed a letter in lieu of a brief on exception. The Division of Taxation filed a letter in lieu of a brief in response. 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 the Division of Taxation properly denied petitioner's application for exempt organization status.

FINDINGS OF FACT

We find the facts as determined by the Administrative Law Judge. These facts are set forth below.

On or about July 12, 1989, Josephine Frediani, president of the National Federation of Italian-American Societies, Inc., submitted to the Division of Taxation an application for an

exempt organization certificate seeking an exemption from sales and use taxes under Tax Law § 1116(a)(4).

By correspondence from the Division of Taxation dated November 20, 1989 the Division denied petitioner's application for exempt organization status. The explanation included a description of the organizational and operational tests applied for the purpose of determining whether the organization has met certain criteria. The Division stated the basis for its conclusions, in pertinent part, as follows:

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

1. The stated purposes specified in Article 2 of your Certificate of Incorporation are not exclusively charitable within the above definition of that term.

2. Your Certificate of Incorporation fails to dedicate the assets of the corporation to an exempt purpose, upon dissolution.

* * *

Your corporation does not meet the operational test for exemption. The information presented discloses that, although some of your activities may be charitable in nature, it is substantially operated for civic and social welfare purposes. Its community benefit programs bring about civic betterments and social improvements, thus promoting the common and general welfare of the community. While such activities serve a civic/social welfare purpose it does not serve a charitable or other exempt purpose specified in the statute.

In addition, we note that over 50% of your total expenditures for 1988 were disbursed for social activities, i.e. Dinner dance, Sports Day, and trips. Social activities, also do not further and [sic] exempt purpose specified in the statute. Also, we note that your total expenditures for Villa Roma trip exceeds the income for that affair. Accordingly, it cannot be said that your earnings do not inure to the benefit of members of [sic] private individuals.

Further, we note that the Federal exemption received by your corporation is under section 501(c)(4) of the Internal Revenue Code, as a social welfare organization, rather than section 501(c)(3), as a charitable organization, which is identical to the Sales Tax Law.

Since your corporation is not both organized and operated exclusively for one or more of the purposes specified in section 1116(a)(4) of the Tax Law, it does not qualify for sales tax exemption."

The National Federation of Italian-American Societies, Inc. is a community service organization founded in 1964 and incorporated under the not-for-profit organization law of the

State of New York in 1967. Submitted into evidence was a document which enumerated the community services offered by the Federation as follows:

- "1. Assisting people in applying for naturalization and offering citizenship courses in preparation for the naturalization examinations.
2. Helping people in their applications for pensions, Medicare, Medicaid and Social Security matters.
3. Helping newly arrived immigrants in obtaining gainful employment.
4. Assisting immigrant students in obtaining adequate educational placement and get through the transitional difficulties.
5. Offering free summer arts and crafts programs for children.
6. Organizing surplus food distributions to Senior Citizens and needy people.
7. Contributing to charitable initiatives by helping people in desperate need of assistance.
8. Offering voter registration programs.
9. Organizing recreational activities for youngsters and adults alike.
10. Offering free English language classes."

According to both its certificate of incorporation and its by-laws, the following are the purposes for which this organization is organized:

- "a) To promote fellowship among, and advance the social, cultural, recreational, and civic interests, of persons of Italian origin or descent;
- b) To maintain and preserve the cultural heritage of their country of heritage and of the United States;
- c) To help advance and promote a better understanding of United States citizenship and community responsibility;
- d) To promote, contact and obtain cooperation among such organizations and societies, of persons of Italian origin in the United States as may become members of these federations;
- e) To establish a Federation center in New York State for the purpose of assisting in the coordination of activities of member organizations and societies, and disseminating information to and among member organization; and to arrange gatherings on holidays and on other occasions.
- f) To exercise any, all and every power in carrying out the corporation purpose that may be conferred upon cooperations formed under the membership cooperating law of the state of New York, provided, however, that the cooperation is not organized for profit and no part of its net earnings shall

inure to the benefit of any particular, subscriber, number, director, officer, of [sic] any other individual."

Pursuant to a request from the Division of Taxation, petitioner submitted additional information with respect to financial information of the organization. The 1988 Statement of Receipts and Expenditures detailed the income and disbursements for calendar year 1988 as follows:

"Receipts:

Dues	\$ 891.00
Adver.	315.00
Atlantic City Trip	1726.00
Villa Roma	795.00
Donations	1006.00
Sport Food Program	728.00

Fund Raiser:

Dinner Dance and Book	4665.00
Raffles and Tickets	<u>5501.00</u>
Total Income 1988	\$ 15627.00

General Expenses 1988

Rent	\$ 5460.00
Con Edison	305.83
NY Telephone	350.29
Postage	328.02
Adv.	170.00
Stationary [sic]	6.47
Donations	116.00
Photographer	25.00
Mass Card	10.00
Subscriptions	140.00
Sport Day	1408.61
Copy Machine Install	335.93
I.R.S. Fee	150.00
Dinner Dance	5128.00
Hall	1711.93
Journal	812.78
Ticket	47.00
Villa Roma	955.35
Atlantic City	937.00
Misc	<u>869.01</u>
Total Expense 1988	<u>\$ 19267.22</u>

Income/Loss	<u><u>\$ (3640.22)"</u></u>
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Information submitted to the Division of Taxation in addition to its application indicated that as part of its activities petitioner sponsors several educational courses conducted by certified teachers and volunteer personnel, holds and supervises arts and crafts courses during

the summer for children ages five to seven, offers an English course for persons who are foreign born and unable to read and write the English language, offers a naturalization course for persons who intend to become American citizens, as well as participates in lectures and discussion groups relating to youth and senior citizen services and programs, immigration and naturalization, job placement, education and food stamps.

According to the testimony provided by Arnaldo Ferraro, founder of petitioner, the activities organized by the corporation include offering services to the community which prevent cruelty and harm to children, as well as sponsoring special programs for children with respect to crafts and amateur sports. In addition, petitioner donates funds to the Sacred Heart Spiritual Society, an agency that volunteers services to the poor and needy, as well as to Peter Jude Ventring Youth Center, a volunteer, non-profit organization for children.

Also submitted into evidence was an addition to the by-laws of petitioner, executed by order of the president on February 3, 1988. It indicated that all of the assets of the organization will be dedicated solely to an exempt purpose upon its dissolution.

The Internal Revenue Service has granted petitioner an exemption from Federal income tax under Internal Revenue Code § 501(c)(4) which includes the following organizations:

"Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes."

OPINION

The Administrative Law Judge determined that the Division of Taxation (hereinafter the "Division") properly denied petitioner's application for exempt organization status. The Administrative Law Judge concluded that petitioner was not organized and did not operate exclusively for a charitable purpose as set forth in Tax Law § 1116(a)(4) and 20 NYCRR 529.7(c)(1)(i) and (d). Furthermore, the Administrative Law Judge noted that petitioner was exempt from Federal taxation by virtue of Internal Revenue Code § 501(c)(4), and not § 501(c)(3), which is the section in the Internal Revenue Code referred to consistently in the case

law and regulations relating to Tax Law § 1116(a)(4).

On exception, petitioner reasserts that it is a charitable organization. Petitioner argues that, because it is exempt from Federal taxation under Internal Revenue Code § 501(c)(4) instead of § 501(c)(3), such technicality should not be determinative in the denial of its tax exempt status. Furthermore, petitioner argues that the denial of its tax exempt status was "based upon assumptions and technicalities of law which were taken into account and given more importance than they should have received" (Petitioner's letter in lieu of brief).

In response, the Division asserts that the evidence and record of this hearing clearly show that petitioner's activities were substantially in furtherance of non-exempt purposes. Moreover, the Division argues that petitioner failed to meet its burden of proof to establish that it met both the organizational and operational tests set forth by Tax Law § 1116(a)(4). Therefore, the Division requests that the determination of the Administrative Law Judge be sustained.

We uphold the determination of the Administrative Law Judge.

On exception, petitioner merely restated its argument that it made at the hearing below. We conclude that the Administrative Law Judge adequately dealt with the issue in her determination below and, therefore, we sustain the determination based upon the opinion rendered by the Administrative Law Judge.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of National Federation of Italian-American Societies, Inc. is denied;
2. The determination of the Administrative Law Judge is sustained; and

3. The petition of National Federation of Italian-American Societies, Inc. is denied.

DATED: Troy, New York
June 20, 1991

/s/John P. Dugan

John P. Dugan
President

/s/Francis R. Koenig

Francis R. Koenig
Commissioner

/s/Maria T. Jones

Maria T. Jones
Commissioner