

STATE OF NEW YORK
TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
INTERNATIONAL BAR ASSOCIATION	:	DECISION
for Redetermination of Exempt Organization Status under	:	DTA No. 809462
Articles 28 and 29 of the Tax Law.	:	

Petitioner International Bar Association, 2 Harewood Place, Hanover Square, London W1R 9HB, England, filed an exception to the determination of the Administrative Law Judge issued on February 18, 1993. Petitioner appeared by Bigham, Englar, Jones & Houston, Esqs. (Joseph A. Kilbourn, Esq., of counsel). The Division of Taxation appeared by William F. Collins, Esq. (Carroll R. Jenkins, Esq., of counsel).

Petitioner filed a brief in support of its exception and the Division of Taxation filed a brief in opposition. Petitioner filed a reply brief on June 1, 1993 which began the six-month period to issue this decision. Petitioner's request for oral argument was denied.

The Tax Appeals Tribunal renders the following decision per curiam.

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.

Petitioner, International Bar Association, submitted to the Division of Taxation ("Division") an application for an exempt organization certificate seeking an exemption from sales and use taxes under Tax Law § 1116(a)(4) dated October 3, 1990.

By correspondence from the Division dated January 15, 1991, 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 concluded that petitioner failed to meet the organizational test and stated the following reasons:

- "1. The stated purposes specified in Article 1 of your client's constitution are not exclusively educational within the above definition of that term nor are they among any of the other purposes specified in the statute for which sales tax exemption may be granted.
- "2. Your client's constitution and by-laws fail to dedicate the assets of the organization to an exempt purpose, upon dissolution."

The Division's correspondence further discussed numerous revenue rulings which it believed described organizations operating in a similar manner to petitioner's organization. The Division stated "[a]lthough some of your client's activities may be educational, it is substantially engaged in the advancement of its profession and its members." The Division cited pertinent authority where the Supreme Court held that the presence of a single non-exempt purpose or activity, if substantial in nature, would destroy the exemption regardless of the number of important of truly exempt purposes.

In addition the Division noted that the Federal exemption received by petitioner was under Internal Revenue Code ("IRC") § 501(c)(6) as a business league, rather than section 501(c)(3) as an educational organization, noting that section 501(c)(3) is the provision identical to the sales tax law.

The Internal Revenue Service originally granted petitioner exemption under IRC former § 101(7) which was succeeded by IRC § 501(c)(6) and includes the following organizations:

"Business leagues, chambers of commerce, real-estate boards, boards of trade . . . not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual."

The International Bar Association was organized in New York as an unincorporated association, and was granted exemption from Federal income taxation on June 1, 1948. The Internal Revenue Service has continued to recognize petitioner as a tax-exempt organization

and, as a condition for such, petitioner is required to file US Form 990, Return of Organization Exempt from Income Tax.

The Constitution of the International Bar Association, originally adopted in 1947, was introduced into evidence in its amended June 1991 form. Article 1 of the constitution sets forth the objectives of the association as follows:

- "1.1 to establish and maintain relations and exchanges between Bar Associations and Law Societies and their members throughout the world.
- "1.2 to assist such Associations and Societies and members of the legal profession throughout the world to develop and improve the profession's organisation and status.
- "1.3 to assist members of the legal profession throughout the world, whether in the field of legal education or otherwise, to develop and improve their legal services to the public.
- "1.4 to advance the science of jurisprudence in all its phases.
- "1.5 by common study of practical problems to promote uniformity and definition in appropriate fields of law.
- "1.6 to promote the administration of justice under the rule of law among the peoples of the world.
- "1.7 to promote in the execution of these objects the principles and aims of the United Nations in their legal aspects and to co-operate with and promote co-ordination among, international juridical organizations having similar purposes."

Petitioner submitted into evidence a statement of the aims and activities of the International Bar Association. This statement was part of the documentation submitted in its original application for exempt status. The information it provided is reproduced below:

- "1. EDUCATION THROUGH:
 - "(a) Conducting Conferences and Seminars worldwide, attendance at which is recognised by many National, State and Provincial Bars as qualifying for Continuing Legal Education credit points, (as an example see 1990 programme attached); and
 - "(b) Publishing many of the papers presented at these Conferences and Seminars as well as work-studies by the Association's 56 Specialist Committees.
- "2. UPHOLDING THE INDEPENDENCE OF THE JUDICIARY AND THE RIGHTS OF LAWYERS FREELY TO PRACTICE THEIR PROFESSION THROUGH:

- "(a) Organising Seminars in Developing Countries and publishing papers and books on the topic;
- "(b) Sending observers to trials of judges and lawyers subject to human rights abuses;
- "(c) Sending fact-finding missions to countries where it is alleged human rights are being abused; and
- "(d) Sending protest letters to Heads of State of countries where human rights abuses occur, such letters being supported by similar letters from the 124 National and State Bars belonging to the IBA.

"3. STRENGTHENING THE ORGANISED BAR IN DEVELOPING COUNTRIES

- "(a) Organising Seminars and publishing papers and books on topics such as How to Organise a Bar Association, or a legal Aid Scheme or a Continuing Legal Education Programme, on the use of modern technology, and on drawing up and enforcing a Professional Ethical Code;
- "(b) Sending experts to Developing Countries to advise on the above; and
- "(c) Donating equipment and materials, such as personal computers and law books, to Developing Country Bar Associations."

Petitioner presented the testimony of George Seward, an attorney who acted in a representative capacity of petitioner's organization and presently holds the title of honorary life president of the International Bar Association. Mr. Seward described the formation of the International Bar Association in 1946 as an attempt by the American Bar Association to assist the legal profession in the formation of an association similar to the United Nations to advance the cause of peace. He testified that the organization is comprised of bar associations of different countries around the world, and commencing in 1970 individual lawyers were invited to become members. Mr. Seward reviewed the objectives set forth in the constitution, and characterized the functions of the organization as "basically educational," though commenting that social activities were not an insubstantial part of the organization's function. He explained that a social connection was initially necessary to understand and further another person's point of view, and the organization promoted such exchange.

OPINION

The Administrative Law Judge found that petitioner did not meet its burden under Tax

Law § 1116(a)(4) of proving that it was organized exclusively for educational purposes. In this regard, the Administrative Law Judge found that the purposes set forth in petitioner's constitution were concerned in large part with the advancement of the professional interests of its members and that these purposes were broader than those set forth in Tax Law § 1116(a)(4).

The Administrative Law Judge stated with respect to the operation of petitioner that: "although educational activities exist, perhaps in this case more than others, the nature of the association is such that the interests are predominantly professional and designed to advance the standing of its members . . . among varying countries (Association of the Bar of the City of New York v. Lewisohn, 34 NY2d 143, 356 NYS2d 555; Matter of Erie County Bar Association, State Tax Commn., August 17, 1979)" (Determination, conclusion of law "D"). The Administrative Law Judge held that it was the fact that petitioner engaged in activities concerned with the promotion of the profession and interaction among its professionals that led to the conclusion that petitioner's activities extended beyond an educational purpose in a substantial way. The Administrative Law Judge relied on Revenue Rulings 71-504 and 71-505 in reaching this conclusion, in spite of petitioner's assertion that its activities were not identical to those targeted in the Revenue Rulings. The Administrative Law Judge concluded that the principles underlying these rulings were applicable in this case.

Finally, the Administrative Law Judge noted that petitioner's Federal exemption was under Internal Revenue Code ("IRC") § 501(c)(6) not § 501(c)(3), and that the likeness between IRC § 501(c)(3) and Tax Law § 1116(a)(4) cannot be ignored in this matter as it is Tax Law § 1116(a)(4) under which petitioner is seeking exemption.

On exception, petitioner argues that it is organized and operated for one or more exempt activities and that any nonexempt activity is an insubstantial part of its total activities. Further, petitioner argues that the case law relied upon by the Administrative Law Judge was misapplied. Specifically, petitioner argues that the Administrative Law Judge's reliance on Association of the Bar of the City of New York v. Lewisohn (supra) is misguided as it did not engage in many of the keystone activities set forth in that case. Petitioner also argues that the

cases relied upon by the Administrative Law Judge are inapplicable because they involved activities that were beyond its scope or were totally dissimilar to its activities.

Petitioner also asserts that any social activities it conducted constituted an insubstantial portion of its total activities and that the Administrative Law Judge misinterpreted Mr. Seward's testimony on this point. Petitioner states that any attempt to isolate the social activities from the educational activities is impossible.

In its brief in opposition, the Division asks that the determination of the Administrative Law Judge be sustained. The Division argues that the purposes of the International Bar Association, as set forth in its Constitution, are not exclusively educational in nature but are primarily professional in nature. Further, the Division, citing Matter of Erie County Bar Assoc. (supra), asserts that, although the International Bar Association functions in an international setting, its purposes differ little from other bar associations and that "the primary benefit of the IBA's activities, is to its members, the legal profession" (Division's reply brief, p. 3).

The Division also notes that petitioner is exempt as a professional corporation under IRC § 501(c)(6) and not as a charitable or educational organization under IRC § 501(c)(3).

Finally, the Division argues that the International Bar Association's Constitution does not provide for the distribution of assets to an exempt purpose upon dissolution. The Division contends that the dissolution provision is vague and ambiguous.

In its reply brief, petitioner continues to argue that it cannot be compared to the bar associations in the cases cited by the Administrative Law Judge and the Division as they involved activities, e.g., evaluating or recommending judicial candidates, that go beyond the scope of petitioner's activities.

Further, petitioner questions whether the Tax Appeals Tribunal can consider petitioner's compliance with 20 NYCRR 529.7(c)(3), regarding distribution of assets upon dissolution, as the Administrative Law Judge did not rule on this issue. In any event, petitioner contends that it is in compliance with the regulation.

Finally, petitioner argues that the fact that it is exempt from tax under IRC § 501(c)(6)

and not under IRC § 501(c)(3) should not preclude it from exemption under Tax Law § 1116(a)(4).

We find no basis in the record before us for modifying the determination of the Administrative Law Judge in any respect. Therefore, we affirm the determination of the Administrative Law Judge for the reasons stated in said determination.

With respect to petitioner's compliance with 20 NYCRR 529.7(c)(3), i.e., the distribution of assets, we decline to exercise our authority to address this issue because neither party raised it in a timely filed exception (Matter of Auriemma, Tax Appeals Tribunal, September 17, 1992).

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of the International Bar Association is denied;
2. The determination of the Administrative Law Judge is affirmed; and
3. The petition of the International Bar Association is denied.

DATED: Troy, New York
November 18, 1993

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

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