TAX EXEMPT
CHP MAGAZIN
ACCUMULATED SURPLUSES

BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of

CALIFORNIA ASSOCIATION OF
HIGHWAY PATROLMEN

Appearances:

For Appellant: Robert H. Showen,
Attorney at Law

Byron L. Meckfessel,
Certified Public Accountant

For Respondent: Peter S. Pierson and James T. Philbin,
Associate Tax Counsels

O P I N I O N

This appeal is made pursuant to section 25667 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protests of California Association of Highway Patrolmen against proposed assessments of additional franchise tax in the amounts of $156.10, $1,285.30, $633.50, and $1,697.95, for the income years ended June 30, 1958, 1959, 1960, and 1961, respectively.

The issue is whether for the years under consideration appellant is entitled to be classified as an exempt corporation.

In 1929 appellant was formed as a nonprofit corporation. Appellant's membership is limited to California highway patrolmen. More than 80 percent of the patrolmen are members. Among the objectives expressed in the organization's by-laws are the promotion of the best interests of members and the enactment of such laws relating to highway traffic control as are deemed desirable by appellant.

Appellant makes highway safety recommendations to

the Governor, the state Legislature, the Commissioner of the California Highway Patrol, and others. Recommendations are principally developed at an annual traffic safety conference. Ideas with respect to highway safety are discussed at membership meetings. Communication is made to the public regarding highway safety in the newspapers, and on radio, television, and signboards appearing along the highways.

Appellant also seeks to maintain and improve the quality of patrolmen, It endeavors to improve the manner of their selection, their compensation, and their employment conditions. One of the principal benefits it offers to its members is a $2,000 benefit payable to the beneficiary of a member upon his death,

Appellant publishes a monthly magazine entitled "The California Highway Patrolman." Approximately 46 percent of the magazines are distributed to members and 19 percent to advertisers, without charge to e ither group. Approximately 25 percent are purchased by the general public at a.. price of 50 cents per copy or $5 per subscription year. About 10 percent of the magazines are distributed to the public schools.

The magazine includes articles on highway safety, places to visit, history, fiction, and sports, It also contains news concerning the members, such as news of retirements, acts or" heroism, and awards to patrolmen.

A substantial portion of each issue contains advertisements purchased by persons and firms in various types of businesses, many of which are related to highway use. The advertisers include truckers, contractors, service station operators, garage operators, and automobile distributors.

While very little time is spent by appellant's members in activities relating to the magazine, considerable timeisspent in those activities by appellant's executive manager, who is a full time employee and editor of the magazine, and by one or more assistants,

Appellant's greatest source of both revenue and expense is publication of the magazine. The gross receipts from the publication for the income years on appeal were as follows:

Year Ended June 30	Total Gross Receipts	Gross Receipts Advertising	Gross Receipts Circulation
1958	$ 172,675	$ 143,457	$ 29,217
1959	181,307	151,745	29,562
1960	199,658	169,650	30,007
1961	190,354	158,587	31,766

Income for the same years from all sources was as follows:

	June 30, 1958	June 30, 1959	June 30, 1960	June 30, 1961
Magazine net income	$ 48,157	$ 53,737	$ 55,479	$ 53,097
Membership dues and fees	18,532	30,269	29,222	31,613
Interest	10,321	10,573	11,282	14,396
Donations	428	499	395	772
Sale of emblems	54	29	67	81
Other income	nil	1,089	15	nil
Total	$ 77,492	$ 96,196	$ 96,460	$ 99,959

Amounts paid out in death benefits for the years under consideration were $35,000 for the year ended June 30, 1958; $28,110 for the year ended June 30, 1959; $46,000 for the year ended June 30, 1960; and $22,000 for the year ended June 30, 1961.

A considerable surplus accumulated prior to the period under appeal and continued to grow during the years on appeal. These facts are disclosed by the following table:

Year Ended June 30	Net Income	Accumulated Earned Surplus
1958	$ 4,502	$ 417,388
1959	29,139	446,528
1961	32,589	490,568

Respondent Franchise Tax Board contends that the publication of the magazine and the furnishing of death benefits precludes classification of appellant as an exempt corporation. Appellant contends that its primary purpose is the promotion of social welfare through the promotion of safety on the highways and that the publication of the magazine and the furnishing of death benefits are merely some of the methods used to accomplish that exempt purpose. It claims exemption under section 23701f of the Revenue and Taxation Code.

The following are granted exempt status under the pertinent portion of section 23701f of the Revenue and Taxation Code:

> Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, ...

Respondent's regulations provide that:

> Civic leagues entitled to exemption under Section 23701f comprise those not organized for profit but operated exclusively for purposes beneficial to the community as a whole, and, in general, include organizations engaged in promoting the welfare of mankind.... (Cal. Admin. Code, tit. 18, reg. 23701f.)

The above provisions are similar to those in the federal code and regulations. (Int. Rev. Code of 1954, § 501(c)(4); Treas. Reg. § 1.501(c)(4)-1.)

In determining whether an organization is operated "exclusively" for an exempt purpose, the federal courts have allowed some latitude. They have drawn the line at the point where nonexempt activities are more than merely incidental.

In People's Educational Camp Society, Inc. v. Commissioner, 331 F.2d 923, the petitioner engaged in social welfare activities such as maintenance of a free library, sponsorship of public forums, promotion of musical composition and essay contests, and circulation of pamphlets on important matters of public interest. The overwhelming portion of the petitioner's revenue and expense arose from the operation of a resort where plays, music and art were featured. The petitioner had accumulated a sizable earned surplus. Concluding that the operation of the resort was commercial in nature and not merely incidental to exempt activities, the court held that the petitioner was not operated exclusively for the promotion of social welfare and denied exemption.

In Scripture Press Foundation v. United States, 285 F.2d 800, the petitioner claimed exemption under a statute applying to organizations operated exclusively for religious purposes. The petitioner asserted that its fundamental objective was to stimulate the growth of religious Sunday schools. It provided free instruction. On a large scale, it also sold religious literature for use in Sunday schools and contended that this was merely another method of carrying out its exempt purpose. The court concluded that the sales of the lesson material, however religiously inspired, involved the petitioner in the conduct of a trade or business which was not merely incidental to its exempt activities. Exemption was denied on the ground that petitioner was not operated exclusively for religious purposes.

Appellant rests upon its contention that its main objective is to promote safety on the highways, that all of its activities are incidental to this objective and that social welfare is thereby promoted. It may be conceded that promoting highway safety is an exempt purpose and that appellant does promote it by some of the activities it has described.

All of appellant's activities, however, are overshadowed by the publication of its magazine. The magazine is by far the largest source of appellant's revenue and expense. Its importance to appellant is reflected by the fact that it is edited by appellant's executive manager.

The primary purpose of publishing the magazine does not appear to be the promotion of highway safety. Most of the magazine is devoted to advertising, to articles of general interest, and to news of particular interest to appellant's members. The very substantial income derived from nonmember advertisers and purchasers is spent largely for the direct and primary benefit of members. A considerable part of the income has simply been accumulated.

In view of the publication of the magazine, which has developed into a large commercial venture, we conclude that appellant is not operated exclusively for the promotion of social welfare and is, therefore, not exempt under section 23701f of the Revenue and Taxation Code.

G R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

Appeal of California Association of Highway Patrolmen

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 25667 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protests of California Association of Highway Patrolmen against proposed assessments of additional franchise tax in the amounts of $156.10, $1,285.30, $633.50, and $1,697.95, for the income years ended June 30, 1958, 1959, 1960, and 1961, respectively, be and the same is hereby sustained.

Done at Pasadena, California, this 28th day of June, 1966, by the State Board of Equalization.

_____, Chairman

_____, Member

_____, Member

_____, Member

_____ Member

_____, Acting Secretary