

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
CRAG BURN CLUB, INC./	:	DECISION
CRAG BURN GOLF CLUB, INC.	:	
	:	
for Revision of a Determination or for Refund	:	
of Sales and Use Taxes under Articles 28 and 29	:	
of the Tax Law for the period November 30, 1978	:	
through February 28, 1982.	:	

Petitioners, Crag Burn Club, Inc./Crag Burn Golf Club, Inc., North Davis Road, East Aurora, New York 14052, filed a petition for revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period November 30, 1978 through February 28, 1982 (File No. 45309).

A formal hearing was held before Arthur Bray, Hearing Officer, at the offices of the State Tax Commission, 65 Court Street, Buffalo, New York, on June 27, 1984 at 10:45 A.M., with all briefs to be submitted on or before August 23, 1984. Petitioner appeared by Gary E. Blum, C.P.A. The Audit Division appeared by John P. Dugan, Esq. (Deborah J. Dwyer, Esq., of counsel).

ISSUES

I. Whether petitioners filed a timely petition challenging the assessment of sales and use taxes due.

II. Whether petitioners purchases of topsoil, seed, fertilizer and chemicals used to improve and maintain a golf course were exempt from sales and use tax as purchases for resale to club members.

FINDINGS OF FACT

1. On March 17, 1983, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due to petitioner Crag Burn Club, Inc. The Notice assessed sales and use taxes due in the amount of \$28,356.86, plus interest of \$7,099.23, for a total amount due of \$35,456.09. The assessment was premised, in part, upon the finding that the dues and assessments collected were subject to sales and use tax. This portion of the assessment has not been challenged. The portion of the assessment remaining at issue herein was premised upon the determination that sales and use taxes were due upon petitioner's purchases of topsoil, seed, fertilizer and chemicals used to improve and maintain a golf course which petitioners claim were purchased for resale to club members.

2. On June 13, 1983, the petition challenging the foregoing assessment was mailed, via metered mail, to the Tax Appeals Bureau. The petition was received by the Tax Appeals Bureau on June 20, 1983.

3. In the course of the audit, the Audit Division observed that sales tax was paid on purchases of fertilizer.

4. Crag Burn Club, Inc. was a not-for-profit corporation which became insolvent in 1980. In June, 1981, a partnership of approximately thirty individuals, known as Crag Burn Venture, purchased the real and personal property of Crag Burn Club, Inc. Crag Burn Venture in turn executed separate leases, one for real property and one for personal property, to a new not-for-profit corporation known as Crag Burn Golf Club, Inc. Thereafter, Crag Burn Golf Club, Inc. operated the golf club and facilities.

5. During the fiscal year ended October 31, 1979, Crag Burn Club, Inc. spent \$26,479.27 on seed, fertilizer and chemicals and \$2,408.55 on topsoil

purchases. During the year ended October 31, 1980, said petitioner spent \$19,105.90 on seed, fertilizer and chemicals and \$6,042.22 on topsoil purchases. Each of the foregoing purchases included sales tax.

CONCLUSIONS OF LAW

A. That section 1138(a)(1) of the Tax Law provides, in part, that a determination of the amount of tax due shall be finally and irrevocably fixed "...unless such person against whom it is assessed, within ninety days after giving of notice of such determination shall apply to the tax commission for a hearing."

B. That Tax Law §1147(a)(2) provides, as follows:

"If any return, claim, statement, notice, application, or other document required to be filed, or any payment required to be made, within a prescribed period or on or before a prescribed date under authority of any provision of this article is, after such period or such date, delivered by United States mail to the tax commission, bureau, office, officer or person with which or with whom such document is required to be filed, or to which or to whom such payment is required to be made, the date of the United States postmark stamped on the envelope shall be deemed to be the date of delivery. This subdivision shall apply only if the postmark date falls within the prescribed period or on or before the prescribed date for the filing of such document, or for making the payment, including any extension granted for such filing or payment, and only if such document or payment was deposited in the mail, postage prepaid, properly addressed to the tax commission, bureau, office, officer or person with which or with whom the document is required to be filed or to which or to whom such payment is required to be made. If any document is sent by United States registered mail, such registration shall be prima facie evidence that such document was delivered to the tax commission, bureau, office, officer or person to which or to whom addressed. To the extent that the tax commission shall prescribe by regulation, certified mail may be used in lieu of registered mail under this section. This subdivision shall apply in the case of postmarks not made by the United States Post Office only if and to the extent provided by regulation of the tax commission." (emphasis supplied).

C. That 20 NYCRR 601.3(c), which discusses the time limitations for the commencement of a proceeding, provides, in part, "Where a machine metered stamp is used on the envelope, the petition shall be deemed filed upon receipt."


D. That since petitioners mailed their petition utilizing metered mail, and since the petition was not received within ninety days of the notice that additional tax was assessed, the petition was untimely filed [Tax Law §1138(a)(1); 20 NYCRR 603.1(c)]. Accordingly, the State Tax Commission renders no determination with respect to the merits of the petition.

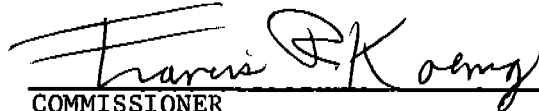
E. That the petition of Crag Burn Club, Inc./Crag Burn Golf Club, Inc. is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due, dated March 17, 1983, is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

APR 15 1985


PRESIDENT


COMMISSIONER


COMMISSIONER