

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Cape Pond, Inc. :
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of :
Corporation Franchise Tax :
under Article 9A of the Tax Law :
for the Year 1975. :

AFFIDAVIT OF MAILING

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 18th day of July, 1980, he served the within notice of Decision by certified mail upon Cape Pond, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Cape Pond, Inc.
RD 1, Box 145
Kerhonkson, NY 12446

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
18th day of July, 1980.

Eubank A. Brink

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Cape Pond, Inc. :
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of :
Corporation Franchise Tax :
under Article 9A of the Tax Law :
for the Year 1975. :

AFFIDAVIT OF MAILING

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 18th day of July, 1980, he served the within notice of Decision by certified mail upon Milford Misner the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Milford Misner
RD #1, Box 145
Kerhonkson, NY 12446

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
18th day of July, 1980.

Rudolph A. Bank

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

July 18, 1980

Cape Pond, Inc.
RD 1, Box 145
Kerhonkson, NY 12446

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Milford Misner
RD #1, Box 145
Kerhonkson, NY 12446
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
CAPE POND, INC. : DECISION
for Redetermination of a Deficiency or for :
Refund of Franchise Tax on Business Cor- :
porations under Article 9-A of the Tax Law :
for the Year 1975. :

Petitioner, Cape Pond, Inc., R.D. 1, Box 145, Kerhonkson, New York 12446, filed a petition for redetermination of a deficiency or for refund of franchise tax on business corporations under Article 9-A of the Tax Law for the year 1975 (File No. 21782).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on March 8, 1979 at 9:00 A.M. Petitioner appeared by Milford Misner, Corporate Officer. The Audit Division appeared by Peter Crotty, Esq. (Kathy L. Sanderson, Esq., of counsel).

ISSUE

Whether petitioner was exempt from the imposition of corporation franchise tax.

FINDINGS OF FACT

1. On March 2, 1977, petitioner, Cape Pond, Inc., filed a Claim for Credit or Refund of Corporation Tax Paid for the period ended December 31, 1975 for tax paid in the amount of \$300.00.

2. Petitioner, a New York corporation, is a title holding corporation owning 700 acres with a lake. In order to become a member, an applicant applies for membership in Cape Pond Fishing Club. If accepted, application is then made to Cape Pond, Inc. Each member, upon being accepted, pays one thousand dollars for two shares of stock in the corporation and is assigned a lot on a lease basis and then has the use of the facilities. The stock is non-transferrable and must be returned to the corporation when no longer desired and the thousand dollars is refunded. Each member, pursuant to his lease, is assessed an amount to cover the budget. The corporation pays all expenses from the assessment. This is its only income.

3. Cape Pond, Inc. is incorporated under the Business Corporation Law of New York. Its certificate of incorporation authorizes the issuance of stock. The corporation was granted Federal exemption pursuant to section 501(c) (2) of the Internal Revenue Code as a corporation holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization (Cape Pond Fishing Club) which itself is exempt under said section.

CONCLUSIONS OF LAW

A. That section 209.1 of the Tax Law imposes a franchise tax upon every domestic corporation:

"For the privilege of exercising its corporate franchise, or of doing business, or of employing capital, or of owning or leasing property in this state in a corporate or organized capacity, or of maintaining an office in this state..."

B. That 20 NYCRR 1.7(b) (2), in effect in 1975 (now 20 NYCRR 1-3.4(b) (6)) exempted non-stock corporations which were organized and operated exclusively for non-profit purposes from franchise tax. Petitioner, Cape Pond, Inc., issues stock and thereby does not come within said exemption.

C. That the claim for refund of March 2, 1977 by petitioner, Cape Pond, Inc., is hereby denied.

DATED: Albany, New York

JUL 18 1980

STATE TAX COMMISSION

James G. Tucker
PRESIDENT

Thomas H. Smith
COMMISSIONER

Francis P. Koenig
COMMISSIONER

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James H. [unclear]

JUL 18 1980

James H. [unclear]