

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
The New York Racing Assoc., Inc. :
for Redetermination of a Deficiency or for Refund :
of Franchise Fee on Nonprofit Racing Associations :
under Title 21, Chapter 1 of the Unconsolidated :
Laws for the Year 1978. :

AFFIDAVIT OF MAILING

State of New York }

ss.:

County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 25th day of May, 1984, he served the within notice of Decision by certified mail upon The New York Racing Assoc., Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

The New York Racing Assoc., Inc.
P.O. Box 90
Jamaica, NY 11417

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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
25th day of May, 1984.

David Parchuck

Authorized to administer oaths
pursuant to Tax Law section 174

STATE TAX COMMISSION

AFFIDAVIT OF MAILING

Authorized to administer oaths
pursuant to Tax Law section 174

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

May 25, 1984

The New York Racing Assoc., Inc.
P.O. Box 90
Jamaica, NY 11417

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 Title 21-Chapter 1 of the Tax Law, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law 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
Law Bureau - Litigation Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Jacob Weichholz
Arthur Young & Co.
277 Park Ave.
New York, NY 10172
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
THE NEW YORK RACING ASSOCIATION, INC.	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Franchise Fee on Nonprofit Racing	:	
Associations under Title 21, Chapter 1 of the	:	
Unconsolidated Laws for the Year 1978.	:	

Petitioner, The New York Racing Association, Inc., P.O. Box 90, Jamaica, New York 11417, filed a petition for redetermination of a deficiency or for refund of franchise fee on nonprofit racing associations under Title 21, Chapter 1 of the Unconsolidated Laws for the year 1978 (File No. 42205).

A formal hearing was held before Doris E. Steinhardt, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on December 8, 1983 at 1:30 P.M. Petitioner appeared by Arthur Young & Company (Jacob Weichholz, CPA and Arthur R. Faller, CPA). The Audit Division appeared by John P. Dugan, Esq. (Irving Atkins, Esq., of counsel).

ISSUE

Whether petitioner properly deducted as extraordinary nonrecurring expenses: \$160,000.00 for consulting and other professional services; \$98,000.00 for painting of the grandstand roof at the Aqueduct racetrack; and \$30,000.00 for the overhaul of three circuit breakers at the Aqueduct racetrack.

FINDINGS OF FACT

1. On February 15, 1982, the Audit Division issued to petitioner, The New York Racing Association, Inc. ("NYRA"), a Notice of Additional Tax Due, assessing

additional franchise tax under Title 21, Chapter 1, section 7910 of the Unconsolidated Laws for the year 1978 in the amount of \$296,000.00, plus interest of \$103,600.00, for a total due of \$399,600.00. The assessment was grounded on the Audit Division's disallowance of the following deductions claimed by NYRA as extraordinary nonrecurring expenses:

snow removal	\$242,000
special projects	160,000
painting grandstand	98,000
circuit breaker overhaul	30,000
other operating losses	53,000
	<u>\$583,000</u>

In its petition and by its representative at the hearing, NYRA conceded the disallowance of its claimed expenses for snow removal. At the hearing, counsel for the Audit Division conceded the correctness of NYRA's deduction of "other operating losses".

2. NYRA is a nonprofit racing association incorporated under the Racing, Pari-Mutuel Wagering and Breeding Law, Article II, section 202. (During 1978, the incorporation of nonprofit racing associations was provided for in the Unconsolidated Laws, Title 21, Chapter 1, section 7902.) NYRA owns Aqueduct, Belmont Park and Saratoga racetracks and conducts pari-mutuel wagering on thoroughbred races pursuant to a franchise granted by New York State.

3. During 1978, NYRA expended \$160,000.00 for consulting and professional services in connection with four projects, described below.

(a) A study performed by Pugh Roberts to evaluate the financial impact of off-track betting ("OTB") and other forms of gambling in the New York area. For several years prior to 1978, NYRA revenues had steadily declined, due to the advent of OTB; this study was undertaken to assist NYRA in obtaining legislative relief and was submitted to New York State.

(b) A study of the pari-mutuel system prepared by Booz Allen Hamilton to determine the desirability of changing to a new totalizer system and other new forms of gambling. As a result of this study, NYRA installed a new totalizer system in 1979.

(c) A study of NYRA's employee compensation performed by McKinsey & Co. for the purpose of instituting a grading system for classifying employees.

(d) A customer satisfaction survey and a subsequent counseling program for NYRA's pari-mutuel clerks performed by Gzepel & Gellers. This project was undertaken as the result of the settlement of labor negotiations with the clerks and numerous complaints lodged against the clerks by dissatisfied patrons.

4. During 1978, NYRA expended \$98,000.00 for the painting of the grandstand roof at the Aqueduct racetrack by an independent contractor. Although NYRA annually incurs costs for painting in the regular course of maintaining its facilities, it considers this particular expenditure, which was necessitated by leakage and severe chipping, to be "an infrequent occurrence, ...in excess of the usual painting and maintenance expense customarily expected".

5. During 1978, NYRA expended \$30,000.00 for the overhaul of three circuit breakers at the Aqueduct racetrack, the first major overhaul of these breakers since their installation in the 1950's. NYRA states in its petition, "Clearly, this is not the type of expenditure NYRA would incur in the ordinary course of operations on a regular basis."

CONCLUSIONS OF LAW

A. That an annual franchise fee is imposed on nonprofit racing associations equal to the largest of the following amounts: (1) 85 percent of the first \$15,000,000 of federal taxable income (but without deduction of the franchise

fee), plus 90 percent of the excess over \$15,000,000; (2) \$30,000 per racing day; or (3) entire adjusted net income, less \$1,850,000. Unconsolidated Laws former section 7910.1.a.; currently, Racing, Pari-Mutuel Wagering and Breeding Law section 208.1.a.¹ Entire adjusted net income is computed by adding to taxable income the amount by which operating expenses exceed the greater of: (1) 106 percent of such expenses during the prior year, or (2) if the average consumer price index for urban wage earners and clerical workers is more than 6 percent higher than the average of such index during the prior year, the percentage increase in such index plus 100 percent of the taxpayer's operating expenses for the prior year. Former section 7910.1.b; current section 208.1.b. Operating expenses include all expenses except: "(i) charges for stakes, purses, interest, real estate taxes, extraordinary nonrecurring charges, and depreciation; (ii) promotional costs incurred in connection with specific events; and (iii) costs incurred in the purchase of advertising services." Id.

For 1978, the year in question, NYRA's franchise fee was computed on the basis of entire adjusted net income less \$1,850,000.

B. That the precise issue presented is whether NYRA's expenditures for consulting and other professional services, painting of the grandstand and overhaul of circuit breakers constituted "extraordinary nonrecurring charges", and were therefore properly excluded by NYRA from the prior-year restriction on operating expenses. "Extraordinary nonrecurring charges" is not defined in the statute. For guidance in the interpretation and scope of the term, the Audit Division consulted the analysis prepared by the Budget Division, which participated in the development of the omnibus Horse Racing Bill of 1978, under the

¹ Section 7910 was repealed by the Laws of 1982, Chapter 865, section 2, effective April 1, 1983; section 208 was enacted by the same chapter, section 1, effective the same date.

direction of the Secretary to then-Governor Carey; the analysis states, in pertinent part, "[t]he concept of 'extraordinary, nonrecurring charges' [was] added as an expense item not subject to the 106 percent of prior-year restriction on NYRA's operating expenses to permit the rebuilding of the track surfaces at Belmont which were damaged by the weather during the winter of 1977-78." News Memorandum of State Executive Dept., McKinney's 1978 Session Laws of N.Y. 1751, 1752. The Audit Division maintains that the expenditures at issue are unrelated to track resurfacing and further, with respect to the painting and electrical work, that these are "ordinary, routine jobs which should be done periodically".² Petitioner, on the other hand, contended that it employed "a reasonable businessman's definition and interpretation of 'extraordinary' and 'nonrecurring'", relying on its many years of business experience in conducting racetrack operations.

C. That petitioner's expenditures for consulting and other professional services, the painting of the grandstand roof and the circuit breaker overhaul were not within the ambit of "extraordinary nonrecurring charges". It appears that the expenses need not have been incurred in direct connection with rebuilding track surfaces damaged by the winter conditions of 1977-78; the provision for extraordinary nonrecurring charges was re-enacted by the Laws of 1982 and remains in force today. However, as the term itself implies, the expenses must arise from events and transactions which cannot be anticipated to recur on any regular basis and which cannot be considered recurring factors in an evaluation of the ordinary, usual and customary operations of the business. With recognition that the expenses herein at issue may be in excess of petitioner's average

² The Audit Division did not contend that amounts petitioner spent for circuit breaker overhaul should properly have been capitalized. We therefore do not entertain such argument as a possible ground for disallowing or limiting the expense.

annual expenditures for the respective items and may not be incurred each year or every several years, such expenses nonetheless cannot be said to be either "extraordinary" or "nonrecurring" on the evidence presented.

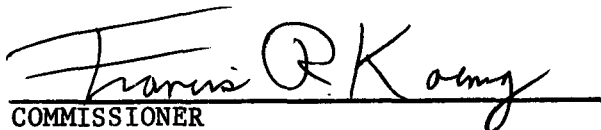
D. That the petition of The New York Racing Association, Inc. is denied; the Notice of Additional Tax Due issued on February 15, 1982 is to be modified in conformity with the concession of the Audit Division set forth in Finding of Fact "1"; and except as so modified, the assessment is in all other respects sustained.

DATED: Albany, New York

STATE TAX COMMISSION

MAY 25 1984


PRESIDENT


COMMISSIONER


COMMISSIONER