

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Sullivan County Harness Racing Association, Inc.: AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or for Refund :
of Tax under Article II of the Pari-Mutuel Revenue :
Law for the Years 1980 & 1981. :

State of New York
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 26th day of August, 1983, she served the within notice of decision by certified mail upon Sullivan County Harness Racing Association, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Sullivan County Harness Racing Association, Inc.
c/o Monticello Raceway
Monticello, NY 12701

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
26th day of August, 1983.

John A. Schutt

Connie A. Hagelund

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Sullivan County Harness Racing Association, Inc.: AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or for Refund :
of Tax under Article II of the Pari-Mutuel Revenue :
Law for the Years 1980 & 1981. :

State of New York
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 26th day of August, 1983, she served the within notice of decision by certified mail upon S. Harvey Fosner the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

S. Harvey Fosner
c/o Monticello Raceway
Monticello, NY 12701

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
26th day of August, 1983.

Jean A. Schuttz

Connie A. Hagelund

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

August 26, 1983

Sullivan County Harness Racing Association, Inc.
c/o Monticello Raceway
Monticello, NY 12701

Gentlemen:

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

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
S. Harvey Fosner
c/o Monticello Raceway
Monticello, NY 12701
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
THE SULLIVAN COUNTY HARNESS RACING	:	DECISION
ASSOCIATION, INC.	:	
	:	
for Redetermination of a Deficiency or for	:	
Refund of Tax under Article II of the	:	
Pari-Mutuel Revenue Law for the Years 1980	:	
and 1981.	:	

Petitioner, The Sullivan County Harness Racing Association, Inc., Monticello Raceway, Monticello, New York 12701, filed a petition for redetermination of a deficiency or for refund of tax under Article II of the Pari-Mutuel Revenue Law for the years 1980 and 1981 (File No. 37939).

A formal hearing was held before Doris E. Steinhardt, Hearing Officer, at the offices of the State Tax Commission, Building 9, State Campus, Albany, New York, on August 4, 1982 at 10:30 A.M. Petitioner appeared by S. Harvey Fosner, Esq. The Audit Division appeared by Paul B. Coburn, Esq. (James J. Morris, Jr., Esq., of counsel).

ISSUE

Whether the tax credit provided The Sullivan County Harness Racing Association, pursuant to section 121(6)(c) of the Pari-Mutuel Revenue Law [McKinney's Unconsolidated Laws section 8067(6)(c)], should be deducted from "taxes paid" as such term is used in section 45(1)(b)(iv) of the Pari-Mutuel Revenue Law [McKinney's Unconsolidated Laws section 8019(1)(b)(iv)] in determining the maximum amount of credit allowable under such latter section.

FINDINGS OF FACT

1. In the year 1980, pursuant to the provisions of Pari-Mutuel Revenue Law section 121(6)(c), as added by Chapter 576 of the Laws of 1978 [McKinney's Unconsolidated Laws section 8067(6)(c)], petitioner, The Sullivan County Harness Racing Association, Inc., received a credit in the amount of \$103,422.80. The credit was applied by petitioner against its pari-mutuel revenue tax liability on returns filed for the period June 23, 1980 through July 2, 1980.

2. In the year 1981, pursuant to the provisions of Pari-Mutuel Revenue Law section 121(6)(c), petitioner received a credit in the amount of \$98,616.54. This credit was applied by petitioner against its pari-mutuel revenue tax liability on returns filed for the period June 25, 1981 through July 5, 1981.

3. With regard to the 1980 tax year, petitioner also filed a claim for refund of the credit provided by Pari-Mutuel Revenue Law section 45(1)(b)(iv) [McKinney's Unconsolidated Laws section 8019(1)(b)(iv)] in the amount of \$998,097.00. Petitioner received a refund in the amount of \$995,480.00, the difference of \$2,617.00 not being at issue in this proceeding.

4. With regard to the 1981 tax year, petitioner filed a claim for refund of the credit provided by Pari-Mutuel Revenue Law section 45(1)(b)(iv) in the amount of \$1,040,347.00. On March 16, 1982, a refund of \$835,690.00 was remitted, such sum encompassing a reduction of \$204,657.00. This reduction was explained in a letter from the Director of the District Office Audit Bureau, as follows:

"Overstatement of pari-mutuel taxes paid for
period January 2, 1981 through December 13,
1981

\$ 98,617

Overstatement of pari-mutuel taxes paid for
period January 1, 1980 through December 31,
1980

103,423

Excess 1981 officers' compensation in
comparison to officers' compensation for
1979

2,617

Total Reduction \$204,657

Our Law Bureau has determined the tax credit provided the Sullivan County Harness Racing Association pursuant to Section 121(c) of the Pari-Mutuel Revenue Law should be deducted in the determination of the amount of 'taxes paid' as such term is used in Section 45(b)(iv) in calculating the maximum amount of the credit allowable."

5. Petitioner, within 90 days of the denial of its full refund for the 1981 tax year, made a demand for a formal hearing. At issue in this proceeding is the amount of \$202,040.00, representing the Audit Division's reduction of petitioner's statutory refunds for the 1981 and 1980 tax years in the amounts of \$98,617.00 and \$103,423.00, respectively.

6. Petitioner operates a harness racetrack in Sullivan County, New York.

7. Under the Pari-Mutuel Revenue Law, petitioner receives a certain portion of the commissions of regional off-track betting corporations ("OTB") derived from wagering on races run at the Finger Lakes thoroughbred racetrack. This is due to the New York system of designated regional tracks and special betting districts.

The amounts received by petitioner from these commissions diminished as OTB was authorized and began to accept wagers on races held at racetracks outside of New York State, resulting in a shift of wagering activity away from Finger Lakes. Chapter 576 of the Laws of 1978, codified as section 121(6)(c) of the Pari-Mutuel Revenue Law, attempted to prevent any loss of revenue to harness tracks due to a decrease in payments from OTB resulting from these shifts in wagering activity. This was done by designating a base year, with the tracks eligible for a yearly credit against the pari-mutuel commissions to

be paid to the State for any year where compensation to the harness tracks from thoroughbred wagering at OTB fell below that of the base year.

8. Petitioner has historically held a winter racing meet in the month of December. Originally, it was the only metropolitan area harness track holding racing during that month. However, in 1973, Yonkers and Roosevelt raceways were authorized to race during December, resulting in a loss of revenue to petitioner. The opening of the Meadowlands in New Jersey, in 1976, further decreased revenues.

In 1979, petitioner ceased holding a race meeting in December, claiming that its increasing losses during the month did not warrant keeping the track open. As a result, legislation, enacted as Chapter 887 of the Laws of 1980, was introduced by the Governor and passed by the Legislature in an effort to keep the track open during December. This chapter, codified as section 45(1)(b)(iv) of the Pari-Mutuel Revenue Law, provided a credit for petitioner consisting of the difference between the total amount of pari-mutuel taxes paid and a certain percentage of all the track's pari-mutuel wagering pools. (This credit, which on its face applies to any harness racing association operating in a county that has a population of 250,000 or less and contains no cities, actually applies only to petitioner.)

CONCLUSIONS OF LAW

A. That section 45(1)(b) of the Pari-Mutuel Revenue Law, subparagraphs (i), (ii) and (iii), as amended by Chapter 887 of the Laws of 1980, imposes a tax on pari-mutuel wagering at certain harness racetracks in the State of New York, including petitioner, such tax being two percent of regular wagering pools, two and one-half percent of multiple wagering pools and seven percent of exotic wagering pools. Additionally, such section provides that fifty percent

of the breakage (those sums remaining after the payoffs on wagers are rounded off to ten-cent multiples) on all pools shall be paid to the State, and that a sum equal to one and three-quarters percent of the total pools shall be deducted from the commissions retained by the track, to be used for the purpose of increasing overnight purses.

Section 45(1)(b)(iv), as enacted by Chapter 887 of the Laws of 1980, provides a credit, specifically applicable to Monticello, as aforesaid:

"against the taxes imposed by this subdivision, the maximum amount of which shall be equal to the difference between the total amount of pari-mutuel taxes paid in any year for the period nineteen hundred eighty through nineteen hundred eighty-two and either two and one-half per centum of the total deposits of all its pari-mutuel pools during such year if the applicable contribution to overnight purses pursuant to subparagraph (ii) of this paragraph is equal to three-quarters of one per centum, or one and one-half per centum if such contribution is equal to one and three-quarters per centum." (Emphasis supplied.)

The crux of this matter is whether a credit allowed under section 121(6)(c) of the Pari-Mutuel Revenue Law, providing for a credit against State taxes on pari-mutuel revenues equal to a decrease in certain distributions from regional off-track betting corporations, must be deducted from taxes paid in computing the credit allowed under section 45(1)(b)(iv).

B. That the maximum amount of the credit granted by section 45(1)(b)(iv) must be determined with reference to the credit provided by section 121(6)(c); petitioner would otherwise receive a refund pursuant to section 45 founded on a "total amount of pari-mutuel taxes paid" encompassing the amount of the section 121 credit, an amount not in fact paid but credited or refunded to petitioner. Nowhere in the statutes or in the legislative history is there evidenced a legislative intent to so grant a double credit. Moreover, section 45(1)(b)(iv) allows a credit against the taxes "imposed" limited by the amount of the taxes

"paid", envisioning a situation where these two amounts might diverge, as in the case at hand.

C. That the Audit Division properly reduced petitioner's refunds for 1980 and 1981 by the respective amounts of \$103,423.00 and \$98,617.00.


D. That the petition of The Sullivan County Harness Racing Association, Inc. is hereby denied.


DATED: Albany, New York

AUG 26 1983

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER