

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Westbury Atlantic Club, Inc. :
Michael Wolpov, Rose Wolpov and :
the Estate of Nathan Wolpov : AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Sales & Use Tax :
under Article 28 & 29 of the Tax Law for the :
Period 9/1/73-8/31/76. :

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 21st day of August, 1981, he served the within notice of Decision by certified mail upon Westbury Atlantic Club, Inc., Michael Wolpov, Rose Wolpov and the Estate of Nathan Wolpov, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Westbury Atlantic Club, Inc.
Michael Wolpov, Rose Wolpov and
the Estate of Nathan Wolpov
160 Harvard Ave.
Rockville Centre, NY 11509

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
21st day of August, 1981.

Connie A. Haglund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Westbury Atlantic Club, Inc. :
Michael Wolpov, Rose Wolpov and :
the Estate of Nathan Wolpov : AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Sales & Use Tax :
under Article 28 & 29 of the Tax Law for the :
Period 9/1/73-8/31/76.

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 21st day of August, 1981, he served the within notice of Decision by certified mail upon Jack L. Libert the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Jack L. Libert
Kinzler & Libert
350 Old Country Rd.
Garden City, NY 11530

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
21st day of August, 1981.

Annex A. Hagelund

J. Vredenburg

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

August 21, 1981

Westbury Atlantic Club, Inc.
Michael Wolpov, Rose Wolpov and
the Estate of Nathan Wolpov
160 Harvard Ave.
Rockville Centre, NY 11509

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) 1138 & 1243 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
Jack L. Libert
Kinzler & Libert
350 Old Country Rd.
Garden City, NY 11530
Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Westbury Atlantic Club, Inc. :
Michael Wolpov, Rose Wolpov and :
the Estate of Nathan Wolpov : AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Sales & Use Tax :
under Article 28 & 29 of the Tax Law for the :
Period 9/1/73-8/31/76. :

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 14th day of August, 1981, he served the within notice of Decision by ~~mail~~ **CERTIFIED MAIL** upon Westbury Atlantic Club, Inc., Michael Wolpov, Rose Wolpov and the Estate of Nathan Wolpov, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Westbury Atlantic Club, Inc.
Michael Wolpov, Rose Wolpov and
the Estate of Nathan Wolpov
160 Harvard Ave.
Rockville Centre, NY 11509

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
14th day of August, 1981.

Cornelia D. Hagelund

Jay Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Westbury Atlantic Club, Inc. :
Michael Wolpov, Rose Wolpov and :
the Estate of Nathan Wolpov : AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Sales & Use Tax :
under Article 28 & 29 of the Tax Law for the :
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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 14th day of August, 1981, he served the within notice of Decision by mail upon Jack L. Libert the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Jack L. Libert
Kinzler & Libert
350 Old Country Rd.
Garden City, NY 11530

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
14th day of August, 1981.

Cornie A. Haglund

J. Vredenburg

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

August 14, 1981

Westbury Atlantic Club, Inc.
Michael Wolpov, Rose Wolpov and
the Estate of Nathan Wolpov
160 Harvard Ave.
Rockville Centre, NY 11509

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) 1138 & 1243 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
Jack L. Libert
Kinzler & Libert
350 Old Country Rd.
Garden City, NY 11530
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
WESTBURY ATLANTIC CLUB, INC.	:	
MICHAEL WOLPOV, ROSE WOLPOV and	:	DECISION
THE ESTATE OF NATHAN WOLPOV	:	
	:	
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 September 1, 1973	:	
through August 31, 1976.	:	

Petitioner, Michael Wolpov, 160 Harvard Avenue, Rockville Centre, New York, 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 September 1, 1973 through August 31, 1976 (File No. 19257).

A formal hearing was held before Edward Goodell, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 27, 1979 at 10:45 A.M. Petitioner appeared by Kinzler & Libert, Esqs. (Jack L. Libert, Esq., of counsel). The Audit Division appeared by Peter Crotty, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether admission charges for the use of the swimming pool and beach facilities of the Westbury Atlantic Club, Inc. are subject to the sales and use tax on the ground that the Westbury Atlantic Club, Inc. is a "social or athletic club" as defined in section 1101(d)(13) of the Tax Law and section 527.11(b)(4) of the Regulations and, therefore, that said admission charges constitute "dues" subject to the sales and use tax as provided in section 1105(f)(2) of the Tax Law.

FINDINGS OF FACT

1. On May 20, 1977, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against Westbury Atlantic Club, Inc., Nathan Wolpov, Rose Wolpov and Michael Wolpov, individually and as officers for the period September 1, 1973 through August 31, 1976 in the amount of \$12,515.34, plus penalty and interest of \$2,503.07, for a total of \$15,018.41.

2. Westbury Atlantic Club, Inc., ("WAC") is a business corporation organized under the laws of New York State. It files New York State franchise tax returns and pays the New York State franchise tax.

3. The sole officers, directors and stockholders of the said corporation are petitioner Michael Wolpov, his mother Rose Wolpov and his brother who respectively hold the offices of President, Secretary-Treasurer and Vice-President. During his lifetime, Nathan Wolpov, the father of Michael Wolpov, was a stockholder, director and officer of the said corporation.

4. The said corporation is the owner and operator of swimming pool and ocean bathing facilities located at Atlantic Beach, New York.

5. Each year during the period at issue beginning on Memorial Day and ending on Labor Day, the said corporation provided the following accommodations:

a. It rented cabanas or lockers to customers on a seasonal or daily basis, the rentals for which the petitioner concedes are subject to the sales and use tax.

b. It charged customers an admission fee on a seasonal or daily basis for the use of its swimming pool and ocean beach facilities. It is the petitioner's claim that said admission fees are not subject to the sales and use tax, while the Audit Division asserts that they are subject to the sales and use tax.

c. In addition to the foregoing accommodations, the said corporation, also provided a "sleep away camp membership" for children of its customers who went to summer camps and used said corporation's facilities prior to leaving for camp and after returning from camp. For said use of its facilities a reduced fee was charged by said corporation based on "less use of the cabana which is being rented".

d. The rates charge for the rental of the said cabanas varied with their location and the number of people who used them.

6. The premises occupied by the said corporation contained a restaurant which, during the period at issue, was leased to a concessionaire who operated the said restaurant for the service of the general public. Said restaurant had a separate street entrance for the general public and no admission fee was required for access to and use of the services of said restaurant.

Said concessionaire, during the period at issue, also conducted barbecues and evening dances open to the general public without payment of an admission fee, customers paying solely for food and liquor consumed.

7. (a) The Wolpov family acquired the Westbury Atlantic Club, Inc. in or about the year 1961, at which time certain forms were used by its owners, including a form entitled "Accommodation Rate Schedule", which said form contained "Rules and Regulations" required to be observed by "patrons" and "visitors" and, among other things, stated that its services included "Sleep Away Camp Membership" for "children of patrons at a reduced fee" and also stated that the following activities and services were provided: "Swimming Pool, Hot and Cold Showers, Steam Rooms, Solariums, Sun Deck, Bar, Cafeteria, Barbecue and Swim Parties, Swimming Instruction, Personal Management."

(b) During the period at issue, the said form continued to be used despite the fact that in some respects it no longer accorded with the facts, namely that WAC did not conduct any social or athletic events, tournaments or dances and that the restaurant facilities and dances were conducted by an independent concessionaire under the terms of a lease between it and WAC.

8. During the period at issue, none of the persons who paid rentals or admission fees for the use of the facilities provided by WAC participated in or had any voice with respect to the conduct or management of the said corporation or of the business conducted by it; none of them participated in any elections or committees or in the selection of members or management of said corporation; and no special rights or privileges were conferred upon them in that each of the persons using the facilities of WAC paid a consideration to WAC therefore based upon usage.

9. The petition herein was timely filed by Michael Wolpov, President of Westbury Atlantic Club, Inc., acting both in his individual capacity and in his representative capacity on behalf of said corporation.

CONCLUSIONS OF LAW

A. That admission charges for the use of the swimming and beach facilities of Westbury Atlantic Club, Inc., as distinguished from rentals paid to it for the use of its cabanas and lockers, were not subject to the sales and use tax during the period at issue for the reason that the Westbury Atlantic Club, Inc., during said period, did not have the characteristics of a social or athletic club as defined in section 1101(d)(13) of the Tax Law and section 527.11(b)(4) of the Regulations. Therefore, in the circumstances of this case, said admission charges are exempt from the sales and use tax as provided in section 1105(f)(1) of the Tax Law.

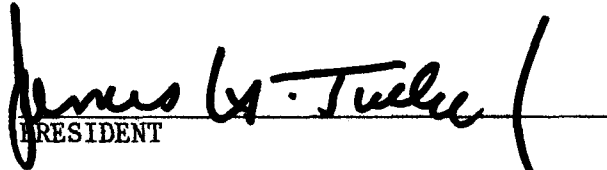
B. That the petition of Michael Wolpov, acting individually and in his representative capacity, is granted and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued May 27, 1977, is hereby cancelled.

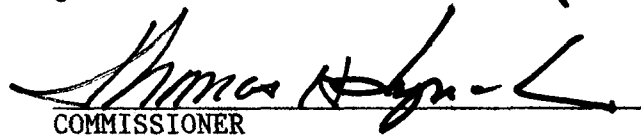
DATED: Albany, New York

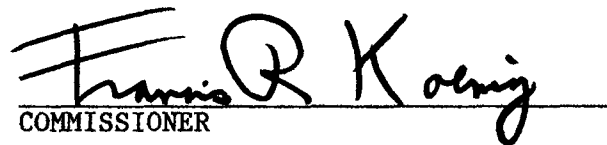
STATE TAX COMMISSION

~~AUG 14 1981~~

AUG 21 1981


PRESIDENT


COMMISSIONER


COMMISSIONER

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Westbury Atlantic Club, Inc.	:	
Michael Wolpov, Rose Wolpov and	:	AFFIDAVIT OF MAILING
the Estate of Nathan Wolpov	:	

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Sales & Use Tax :
under Articles 28 & 29 of the Tax Law for the :
Period September 1, 1973 through August 31, 1976.

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 6th day of November, 1981, he served the within notice of Decision by certified mail upon Westbury Atlantic Club, Inc., Michael Wolpov, Rose Wolpov and the Estate of Nathan Wolpov, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Westbury Atlantic Club, Inc.
Michael Wolpov, Rose Wolpov and
the Estate of Nathan Wolpov
39 Roxen Road
Rockville Centre, NY 11570

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
6th day of November, 1981.

Cornie A. Highland.

J. Vredenburg

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
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Michael Wolpov, Rose Wolpov and	:	AFFIDAVIT OF MAILING
the Estate of Nathan Wolpov	:	

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State of New York
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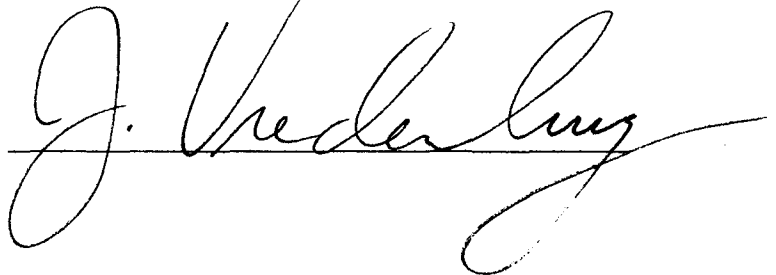
Westbury Atlantic Club, Inc.
Michael Wolpov, Rose Wolpov and
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Sworn to before me this
6th day of November, 1981.



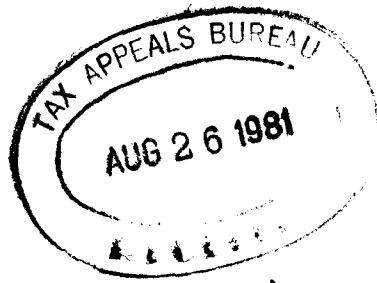


TA 26 (9-79)

STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227

Wolpov

Westbury Atlantic Club, Inc.
Michael Wolpov, Rose Wolpov and
the Estate of Nathan Wolpov
160 Harvard Ave.
Rockville Centre, NY 11509



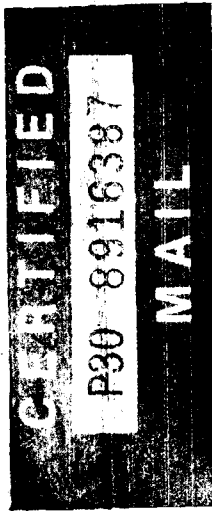
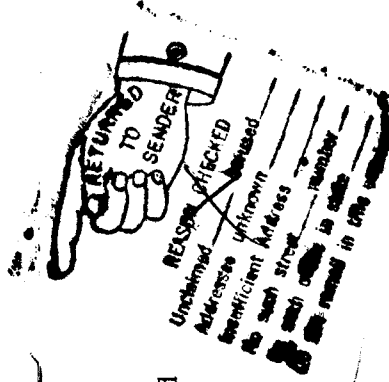
*B/A
9-8-81*

TA 26 (9-79)

STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227

Corr

Westbury Atlantic Club, Inc.
Michael Wolpov, Rose Wolpov and
the Estate of Nathan Wolpov
160 Harvard Ave.
Rockville Centre, NY 11509



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

August 21, 1981

Westbury Atlantic Club, Inc.
Michael Wolpov, Rose Wolpov and
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160 Harvard Ave.
Rockville Centre, NY 11509

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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
Jack L. Libert
Kinzler & Libert
350 Old Country Rd.
Garden City, NY 11530
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

WESTBURY ATLANTIC CLUB, INC.
MICHAEL WOLPOV, ROSE WOLPOV and
THE ESTATE OF NATHAN WOLPOV

DECISION

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 September 1, 1973
through August 31, 1976.

Petitioner, Michael Wolpov, 160 Harvard Avenue, Rockville Centre, New York, 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 September 1, 1973 through August 31, 1976 (File No. 19257).

A formal hearing was held before Edward Goodell, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 27, 1979 at 10:45 A.M. Petitioner appeared by Kinzler & Libert, Esqs. (Jack L. Libert, Esq., of counsel). The Audit Division appeared by Peter Crotty, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether admission charges for the use of the swimming pool and beach facilities of the Westbury Atlantic Club, Inc. are subject to the sales and use tax on the ground that the Westbury Atlantic Club, Inc. is a "social or athletic club" as defined in section 1101(d)(13) of the Tax Law and section 527.11(b)(4) of the Regulations and, therefore, that said admission charges constitute "dues" subject to the sales and use tax as provided in section 1105(f)(2) of the Tax Law.

FINDINGS OF FACT

1. On May 20, 1977, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against Westbury Atlantic Club, Inc., Nathan Wolpov, Rose Wolpov and Michael Wolpov, individually and as officers for the period September 1, 1973 through August 31, 1976 in the amount of \$12,515.34, plus penalty and interest of \$2,503.07, for a total of \$15,018.41.

2. Westbury Atlantic Club, Inc., ("WAC") is a business corporation organized under the laws of New York State. It files New York State franchise tax returns and pays the New York State franchise tax.

3. The sole officers, directors and stockholders of the said corporation are petitioner Michael Wolpov, his mother Rose Wolpov and his brother who respectively hold the offices of President, Secretary-Treasurer and Vice-President. During his lifetime, Nathan Wolpov, the father of Michael Wolpov, was a stockholder, director and officer of the said corporation.

4. The said corporation is the owner and operator of swimming pool and ocean bathing facilities located at Atlantic Beach, New York.

5. Each year during the period at issue beginning on Memorial Day and ending on Labor Day, the said corporation provided the following accommodations:

a. It rented cabanas or lockers to customers on a seasonal or daily basis, the rentals for which the petitioner concedes are subject to the sales and use tax.

b. It charged customers an admission fee on a seasonal or daily basis for the use of its swimming pool and ocean beach facilities. It is the petitioner's claim that said admission fees are not subject to the sales and use tax, while the Audit Division asserts that they are subject to the sales and use tax.

c. In addition to the foregoing accommodations, the said corporation, also provided a "sleep away camp membership" for children of its customers who went to summer camps and used said corporation's facilities prior to leaving for camp and after returning from camp. For said use of its facilities a reduced fee was charged by said corporation based on "less use of the cabana which is being rented".

d. The rates charge for the rental of the said cabanas varied with their location and the number of people who used them.

6. The premises occupied by the said corporation contained a restaurant which, during the period at issue, was leased to a concessionaire who operated the said restaurant for the service of the general public. Said restaurant had a separate street entrance for the general public and no admission fee was required for access to and use of the services of said restaurant.

Said concessionaire, during the period at issue, also conducted barbecues and evening dances open to the general public without payment of an admission fee, customers paying solely for food and liquor consumed.

7. (a) The Wolpov family acquired the Westbury Atlantic Club, Inc. in or about the year 1961, at which time certain forms were used by its owners, including a form entitled "Accommodation Rate Schedule", which said form contained "Rules and Regulations" required to be observed by "patrons" and "visitors" and, among other things, stated that its services included "Sleep Away Camp Membership" for "children of patrons at a reduced fee" and also stated that the following activities and services were provided: "Swimming Pool, Hot and Cold Showers, Steam Rooms, Solariums, Sun Deck, Bar, Cafeteria, Barbecue and Swim Parties, Swimming Instruction, Personal Management."

(b) During the period at issue, the said form continued to be used despite the fact that in some respects it no longer accorded with the facts, namely that WAC did not conduct any social or athletic events, tournaments or dances and that the restaurant facilities and dances were conducted by an independent concessionaire under the terms of a lease between it and WAC.

8. During the period at issue, none of the persons who paid rentals or admission fees for the use of the facilities provided by WAC participated in or had any voice with respect to the conduct or management of the said corporation or of the business conducted by it; none of them participated in any elections or committees or in the selection of members or management of said corporation; and no special rights or privileges were conferred upon them in that each of the persons using the facilities of WAC paid a consideration to WAC therefore based upon usage.

9. The petition herein was timely filed by Michael Wolpov, President of Westbury Atlantic Club, Inc., acting both in his individual capacity and in his representative capacity on behalf of said corporation.

CONCLUSIONS OF LAW

A. That admission charges for the use of the swimming and beach facilities of Westbury Atlantic Club, Inc., as distinguished from rentals paid to it for the use of its cabanas and lockers, were not subject to the sales and use tax during the period at issue for the reason that the Westbury Atlantic Club, Inc., during said period, did not have the characteristics of a social or athletic club as defined in section 1101(d)(13) of the Tax Law and section 527.11(b)(4) of the Regulations. Therefore, in the circumstances of this case, said admission charges are exempt from the sales and use tax as provided in section 1105(f)(1) of the Tax Law.

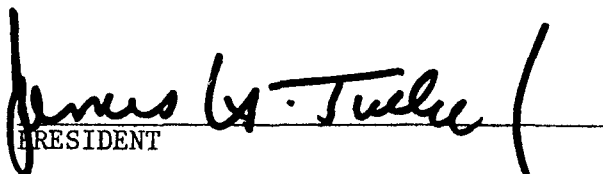
B. That the petition of Michael Wolpov, acting individually and in his representative capacity, is granted and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued May 27, 1977, is hereby cancelled.

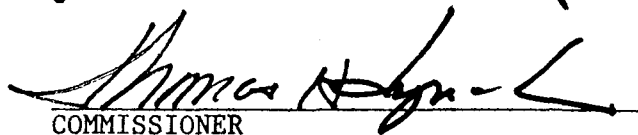
DATED: Albany, New York

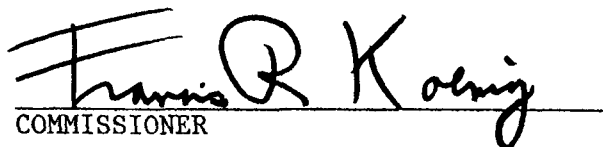
STATE TAX COMMISSION

~~AUG 14 1981~~

AUG 21 1981


PRESIDENT


COMMISSIONER


COMMISSIONER