

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

FENWAY GOLF CLUB, INC.

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Sales & Use :  
Taxes under Article(s) 28 & 29 of the :  
Tax Law for the ~~Year(s)~~ Period(s) :  
12/1/67 - 11/30/70.

State of New York  
County of Albany

Catherine Steele, 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 28th day of September, 1976, she served the within  
Notice of Determination by ~~certified~~ mail upon Fenway Golf Club, Inc.

~~(representative of)~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Fenway Golf Club, Inc.  
Old Mamaroneck Road  
White Plains, New York  
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)~~  
~~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

28th day of September, 1976.

Catherine Steele

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

FENWAY GOLF CLUB, INC.

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of Sales & Use :  
Taxes under Article(s) 28 & 29 of the :  
Tax Law for the ~~Year(s)~~ Period ~~(s)~~ :  
12/1/67 - 11/30/70.

State of New York  
County of Albany

Catherine Steele, 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 28th day of September, 1976, she served the within Notice of Determination by ~~(certified)~~ mail upon Lawrence I. Morgan, CPA (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Lawrence I. Morgan, CPA  
Harris, Kerr, Forster & Company  
420 Lexington Avenue  
New York, New York 10017  
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

28th day of September, 1976.

Catherine Steele

Janet Mack



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU  
STATE CAMPUS  
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

September 28, 1976

TELEPHONE: (518) **457-3850**

Fenway Golf Club, Inc.  
Old Mamaroneck Road  
White Plains, New York

Gentlemen:

Please take notice of the **DETERMINATION**  
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to  
Section(s) **1138 & 1243** of the Tax Law, any  
proceeding in court to review an adverse deci-  
sion must be commenced within **4 months**  
from the date of this notice.

Inquiries concerning the computation of tax  
due or refund allowed in accordance with this  
decision or concerning any other matter relative  
hereto may be addressed to the undersigned. They  
will be referred to the proper party for reply.

Very truly yours,

**Frank J. Puccia**  
**Supervisor of Small**  
**Claims Hearings**

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Application	:	
of	:	
FENWAY GOLF CLUB, INC.	:	DETERMINATION
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 12/1/67 - 11/30/70.	:	

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Applicant, Fenway Golf Club, Inc., Old Mamaroneck Road, White Plains, New York, filed an application 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 12/2/67 - 11/30/70. A small claims hearing was held before Joseph Chyrywaty, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 7, 1976 at 1:15 p.m. Applicant appeared by Lawrence I. Morgan, C.P.A. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Louis Senft, Esq. for counsel).

ISSUE

Are the greens fees, swimming pool fees and tennis fees of a guest subject to sales tax when such fees are billed to a member of a golf club?

FINDINGS OF FACT

1. Applicant, Fenway Golf Club, Inc. timely filed New York state and local sales and use tax returns (ST100) for the periods ending February 28, 1967, through November 30, 1970.

(2)

2. The Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due on April 12, 1972, for \$4,603.56 which included tax, penalty and interest due. The assessment was issued as the result of a field audit determination alleging that greens fees, swimming pool fees and tennis fees of a guest billed to a golf club member are subject to sales tax.

3. A timely filed consent extending period of limitation for assessment of Sales and Use Taxes under Articles 28 and 29 of the Tax Law, (ST578) was obtained by the Sales Tax Bureau.

4. Fenway Golf Club, Inc. operates a golf course and offers other recreational activities such as swimming and tennis. Members of the club are assessed dues which entitle them to use the available facilities.

5. Members of Fenway Golf Club, Inc. frequently invite guests to the club for the purpose of using the available sporting facilities. The members of the club incur charges for their guests to use the golf course, swimming pool and tennis courts. Such charges are made in the form of monthly billings since cash is not used at Fenway Golf Club, Inc.

#### CONCLUSIONS OF LAW

A. That the greens fees, swimming fees and tennis fees of a guest, which are billed to a golf club member, are "dues" within the meaning of section 1101(d)(6), prior to its amendment by Ch. 1004, Laws of 1973 effective September 1, 1973.

(3)

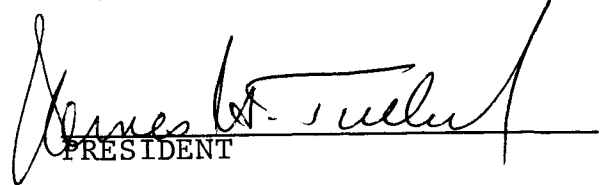
B. That the greens fees, swimming fees and tennis fees, constituting dues, are subject to New York State and local sales tax in accordance with the meaning and intent of section 1105(f)(2) of the Tax Law.

C. That the applicant acted in good faith and the penalties are cancelled.

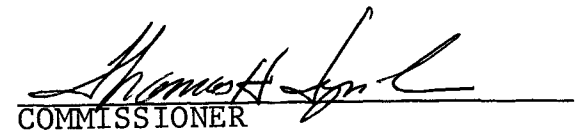
D. That the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued April 12, 1972, is sustained and the application of Fenway Golf Club, Inc. is denied.

DATED: Albany, New York  
September 28, 1976

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER