STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HORIZONS YACHT & SPORTS CLUB, LTD.,
DORAN JACOBS AND ROBERT A. BEHREN

For a Redetermination of a Deficiency or a Refund of Sales and Use Taxes under Article(s) 28 & 29 of the Tax Law for the Year(s) August 1, 1965 to August 31, 1967.

AFFIDAVIT OF MAILING OF NOTICE OF DECISION BY ~~(CERTIFIED)~~ MAIL

State of New York
County of Albany

Katherine D. Manly, 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 14th day of March, 1975, she served the within Notice of ~~Decision (or~~ Determination) by ~~(certified)~~ mail upon Horizons Yacht & Sports Club, Ltd ~~(representative of)~~ the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Horizons Yacht & Sports Club, Ltd.
300 Park Avenue South
New York, New York 10010

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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the ~~(representative of)~~ 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 March, 1975

Katherine D. Manly

Janet Mack

AD-1.30 (1/74)

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HORIZONS YACHT & SPORTS CLUB, LTD., DORAN JACOBS AND ROBERT A. BEHREN

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AFFIDAVIT OF MAILING OF NOTICE OF DECISION BY (~~CERTIFIED~~) MAIL

State of New York
County of Albany

Katherine D. Manly, 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 14th day of March, 1975, she served the within Notice of (~~Decision~~ Determination) by (~~certified~~) mail upon Doran Jacobs (~~representative of~~) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. Doran Jacobs, Officer
222 East 19th Street
New York, 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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (~~representative of~~) 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 March, 1975

Janet Mach

Katherine D. Manly

AD-1.30 (1/74)

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HORIZONS YACHT & SPORTS CLUB, LTD., DORAN JACOBS AND ROBERT A. BEHREN

For a Redetermination of a Deficiency or a Refund of Sales and Use Taxes under Article(s) 28 and 29 of the Tax Law for the Year(s) August 1, 1965 to August 31, 1967.

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State of New York
County of Albany

Katherine D. Manly, 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 14th day of March, 1975, she served the within Notice of D~~xxxxxxxxxx~~ Determination) by ~~(certified)~~ mail upon Robert A. Behren, Esq. ~~(representative of)~~ the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Robert A. Behren, Esq., Officer
964 Third Avenue
New York, New York 10022

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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the ~~(representative of)~~ 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 March, 1975.

Katherine D. Manly

Janet Mack

AD-1.30 (1/74)

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HORIZONS YACHT & SPORTS CLUB, LTD.,
DORAN JACOBS AND ROBERT A. BEHREN

For a Redetermination of a Deficiency or a Refund of Sales and Use Taxes under Article(s) 28 & 29 of the Tax Law for the Year(s) August 1, 1965: to August 31, 1967.

AFFIDAVIT OF MAILING OF NOTICE OF DECISION BY ~~(CERTIFIED)~~ MAIL

State of New York
County of Albany

Katherine D. Manly, 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 14th day of March, 1975, she served the within Notice of ~~Decision (or~~ Determination) by ~~(certified)~~ mail upon Arnold R. Rosenwasser (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. Arnold R. Rosenwasser
32 East 57th Street
New York, New York 10022

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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative of) 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 March, 1975.

Katherine D. Manly

Janet Mack

AD-1.30 (1/74)

STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE
BUILDING 9, ROOM 214A
STATE CAMPUS
ALBANY, N. Y. 12226
AREA CODE 518
457-2655, 6, 7

STATE TAX COMMISSION
Saul Heckelman, Acting President
[redacted]
A. BRUCE MANLEY
MILTON KOERNER

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

DATED: Albany, New York
March 14, 1975

Horizons Yacht & Sports Club, Ltd.
300 Park Avenue South
New York, New York 10010

Gentlemen:

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

Please take further notice that pursuant to Section(s) 1138 & 1241 of the Tax Law, any proceeding in court to review an adverse decision must be commenced within 4 months from the date of this notice.

Any 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. These will be referred to the proper party for reply.

Very truly yours,

Paul B. Coburn
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau
Mr. Doran Jacobs, Officer
222 East 19th Street
New York, New York

Hubert A. Sahren, Esq., Officer
564 Third Avenue
New York, New York 10022

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Applications of HORIZONS YACHT & SPORTS CLUB, LTD., DORAN JACOBS AND ROBERT A. BEHREN 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 August 1, 1965 to August 31, 1967.	DETERMINATION

Applicants, Horizons Yacht & Sports Club, Ltd., Doran Jacobs and Robert A. Behren, have filed applications 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 August 1, 1965, to August 31, 1967. (File Nos. 90, 753,277 and 90,329,358). A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 23, 1974, at 9:15 A.M. Applicants appeared by Robert A. Behren, Esq. The Tax Bureau appeared by Saul Heckelman, Esq. (Solomon Sies, Esq. of counsel).

ISSUE

Were admissions to social dances held at hotels by applicant Horizons Yacht & Sports Club, Ltd., during the period from August 1, 1965, to August 31, 1967, subject to sales tax?

FINDINGS OF FACT

1. On October 27, 1967, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due

against applicant, Horizons Yacht & Sports Club, Ltd., imposing New York State and New York City sales taxes in the total sum of $963.33 upon receipts for unreported dance admissions for the period from August 1, 1965, to August 31, 1967. It also imposed penalties and interest to October 27, 1967, in the sum of $121.71, making a total due of $1,085.04.

2. On December 19, 1969, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicants, Doran Jacobs and Robert A. Behren, equal to the amount of New York State and New York City sales taxes due upon unreported dance admissions from applicant, Horizons Yacht & Sports Club, Ltd., for the period from August 1, 1965, to August 31, 1967, upon the grounds that they were persons required to collect, truthfully account for and pay over said taxes and that they failed to do so. It also imposed penalties and interest to December 19, 1969, in the sum of $250.46, making a total due of $1,213.79.

3. It was conceded by the applicants at the formal hearing that the amounts shown as the taxes due on the Notice of Determination and Demand for Payment of Sales and Use Taxes Due dated October 27, 1967, were correct, if it was determined by the State Tax Commission that dance admissions were subject to the sales tax. It was further conceded at said hearing that applicants, Doran Jacobs and Robert A. Behren, were responsible officers who would

be personally liable for any unpaid sales taxes due from applicant, Horizons Yacht & Sports Club, Ltd.

4. Applicant, Horizons Yacht & Sports Club, Ltd., was a corporation that during the period from August 1, 1965, to August 31, 1967, conducted periodic social dances at hotels in New York City. It charged admissions to the dances which varied from $1.50 to $3.50 for each admission. It also engaged in the sailing and ski instruction and travel agency business, the proceeds from which were exempt from sales tax.

CONCLUSIONS OF LAW

A. That social dancing is an ordinary social activity Marcus v. Village of Mamaroneck 16 N.Y.S. 2d 626, 258 App. Div. 328 (2nd Dept. 1940) reversed on other grounds 283 N.Y. 325, 28 N.E. 2d 856 (1940) and is not a sporting activity in which the patron is a participant in accordance with the meaning and intent of Section 1105(f)(1) of the Tax Law and thus applicant, Horizons Yacht & Sports Club, Ltd.'s dance admission charges were subject to sales tax. Application of Alumni Club of New York, Inc. and Doran Jacobs, Decision of the State Tax Commission dated December 21, 1970.

B. That the applications of Horizons Yacht & Sports Club, Ltd., Doran Jacobs and Robert A. Behren are denied and the notices

of determination and demand for payment of sales and use taxes due, dated October 27, 1967, and December 19, 1969, are sustained.

DATED: Albany, New York
March 14, 1975

STATE TAX COMMISSION

PRESIDENT

COMMISSIONER

COMMISSIONER

STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE
BUILDING 9, ROOM 214A
STATE CAMPUS
ALBANY, N. Y. 12226
AREA CODE 518
457-2655, 6, 7

STATE TAX COMMISSION
Saul Heckelman, Acting President
[redacted]
A. BRUCE MANLEY
MILTON KOERNER

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

DATED: Albany, New York
March 14, 1975

Horizons Yacht & Sports Club, Ltd.
300 Park Avenue South
New York, New York 10010

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 decision must be commenced within 4 months from the date of this notice.

Any 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. These will be referred to the proper party for reply.

Very truly yours,

Paul B. Coburn
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

Mr. Doran Jacobs, Officer
222 East 19th Street
New York, New York

Robert A. Behren, Esq., Officer
964 Third Avenue
New York, New York 10022

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Applications of HORIZONS YACHT & SPORTS CLUB, LTD., DORAN JACOBS AND ROBERT A. BEHREN 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 August 1, 1965 to August 31, 1967.	DETERMINATION

Applicants, Horizons Yacht & Sports Club, Ltd., Doran Jacobs and Robert A. Behren, have filed applications 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 August 1, 1965, to August 31, 1967. (File Nos. 90, 753,277 and 90,329,358). A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 23, 1974, at 9:15 A.M. Applicants appeared by Robert A. Behren, Esq. The Tax Bureau appeared by Saul Heckelman, Esq. (Solomon Sies, Esq. of counsel).

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3. It was conceded by the applicants at the formal hearing that the amounts shown as the taxes due on the Notice of Determination and Demand for Payment of Sales and Use Taxes Due dated October 27, 1967, were correct, if it was determined by the State Tax Commission that dance admissions were subject to the sales tax. It was further conceded at said hearing that applicants, Doran Jacobs and Robert A. Behren, were responsible officers who would

be personally liable for any unpaid sales taxes due from applicant, Horizons Yacht & Sports Club, Ltd.

4. Applicant, Horizons Yacht & Sports Club, Ltd., was a corporation that during the period from August 1, 1965, to August 31, 1967, conducted periodic social dances at hotels in New York City. It charged admissions to the dances which varied from $1.50 to $3.50 for each admission. It also engaged in the sailing and ski instruction and travel agency business, the proceeds from which were exempt from sales tax.

CONCLUSIONS OF LAW

A. That social dancing is an ordinary social activity Marcus v. Village of Mamaroneck 16 N.Y.S. 2d 626, 258 App. Div. 328 (2nd Dept. 1940) reversed on other grounds 283 N.Y. 325, 28 N.E. 2d 856 (1940) and is not a sporting activity in which the patron is a participant in accordance with the meaning and intent of Section 1105(f)(1) of the Tax Law and thus applicant, Horizons Yacht & Sports Club, Ltd.'s dance admission charges were subject to sales tax. Application of Alumni Club of New York, Inc. and Doran Jacobs, Decision of the State Tax Commission dated December 21, 1970.

B. That the applications of Horizons Yacht & Sports Club, Ltd., Doran Jacobs and Robert A. Behren are denied and the notices

of determination and demand for payment of sales and use taxes due, dated October 27, 1967, and December 19, 1969, are sustained.

DATED: Albany, New York
March 14, 1975

STATE TAX COMMISSION

PRESIDENT

COMMISSIONER

COMMISSIONER

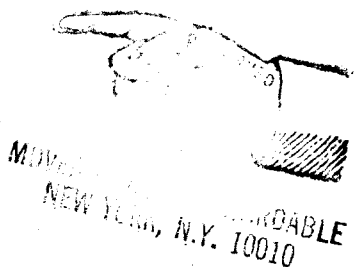
AD 32 (8-74) 50M

STATE OF NEW YORK

Department of Taxation and Finance

STATE CAMPUS

ALBANY, N. Y. 12227



Horizons Yacht & Sports Club, Ltd.

300 Park Avenue South

New York, New York 10010

Paul B. Cotton

STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE
BUILDING 9, ROOM 214A
STATE CAMPUS
ALBANY, N. Y. 12226
AREA CODE 518
457-2655, 6, 7

STATE TAX COMMISSION
Saul Heckelman, Acting President
[redacted]
A. BRUCE MANLEY
MILTON KOERNER

STATE TAX COMMISSION
HEARING UNIT
EDWARD ROOK
SECRETARY TO
COMMISSION

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DATED: Albany, New York
March 14, 1975

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New York, New York 10010

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Paul B. Coburn
HEARING OFFICER

Enc.

cc: Petitioner's Representative
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Mr. Doran Jacobs, Officer
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STATE OF NEW YORK

STATE TAX COMMISSION

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B. That the applications of Horizons Yacht & Sports Club, Ltd., Doran Jacobs and Robert A. Behren are denied and the notices

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DATED: Albany, New York
March 14, 1975

STATE TAX COMMISSION

PRESIDENT

COMMISSIONER

COMMISSIONER