STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition of GRAND SLAM CLUB, INC. For a Redetermination of a Deficiency or a Refund of Sales Taxes Taxes under Article(s) 28 of the Tax Law for the year(s) 1967	Affidavit of Mailing of Notice of Decision, by Registered Mail

State of New York
County of Albany

LYNN HORODOWICH, being duly sworn, deposes and says, that she is an employee of the Department of Taxation and Finance, and that on the 8th day of July, 1969, she served the within Notice of Decision (or of "Determination") by registered mail upon Mr. Joseph O'Connor the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. Joseph O'Connor, Assistant Director for Grand Slam Bridge Club, Inc. 125 East 50th Street, New York, New York and by delivering the same at Room 214a, Building 8, Campus, Albany, marked "REGISTERED MAIL" to a messenger of the Mail Room, Building 9, Campus, Albany, to be mailed by registered mail.

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
8th day of July, 1969.

Grace E. Pritchard

Lynn Horodowich

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition of GRAND SLAM CLUB, INC. For a Redetermination of a Deficiency or a Refund of Sales Taxes under Article(s) 28 of the Tax Law for the year(s) 1967	Affidavit of Mailing of Notice of Decision, by Registered Mail

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LYNN HORODOWICH, being duly sworn, deposes and says, that she is an employee of the Department of Taxation and Finance, and that on the 8th day of July, 1969, she served the within Notice of Decision (or of "Determination") by registered mail upon Koenig & Ratner, Esqs.
the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Koenig & Ratner, Esqs. 60 East 42nd Street, New York, N.Y. 10017

and by delivering the same at Room 214a, Building 8, Campus, Albany, marked "REGISTERED MAIL" to a messenger of the Mail Room, Building 9, Campus, Albany, to be mailed by registered mail.

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
8th day of July, 1969

Grace E. Pritchard

Lynn Horodowich

Sales/Use Determinations
A-Z

Grand Slam Club, Inc.

Mr. Tierney:

Attached is a copy of the determination signed by the State Tax Commission in the matter of Grand Slam Club, Inc. and a copy of a letter I am today sending to Saul Horowitz, Esq. relative to the Grand Baldwin Bridge Studio.

Former Commissioner Murphy had taken a personal interest in this latter case and indicated to me that he would like the matter of the Grand Baldwin Bridge Studio cleared up as quickly as possible in the light of the decision re Grand Slam Club, Inc. and the facts of Grand Baldwin.

I trust you will write Mr. Horowitz directly.

Secretary to the
State Tax Commission

July 3, 1969

See also:
Sales/Use Tax Bureau
Cases A-Z
Grand Baldwin Bridge
Studio
(1/23/69 - 7/8/69)

AD 53 (2-68)

DEPARTMENT OF TAXATION AND FINANCE

MEMORANDUM

TO: Mr. Rook
FROM: Nigel G. Wright
SUBJECT: Sales tax as applied to bridge clubs
Grand Slam Club, Inc.

DATE June 16, 1969
OFFICE Hearing Unit

This is in response to your request for a memo concerning the application of the sales tax to duplicate bridge clubs.

As the proposed determination indicates, I believe Grand Slam Club to be exempt from tax.

I will first discuss the club dues tax. I conclude that while some bridge clubs may be classified as clubs for purposes of this tax, the Grand Slam Club cannot be considered a club. I will next consider the admissions tax and the taxpayer's intention that the fee to participate in a bridge game is not an admission charge to enter a place of amusement and thus is free from tax. I conclude that the taxpayer is right. The third point I discuss is whether duplicate bridge is a sport and exempt from the admissions tax on that basis. (This is important only if, contrary to the second point, participation in a bridge game is otherwise taxable as an admission. Since, however, you may disagree with me on that point, and also because an amendment to the statute is contemplated which would overturn the decision in the Bathrick Enterprises case and thus change the law on that point, it is important to examine this question). I conclude that duplicate bridge is not a sporting activity and thus is not exempt from the admissions tax.

CLUB DUES

Some bridge clubs could be held taxable on club dues depending on the facts. The record in this case, however, would not support such a tax.

The Law Bureau has ruled a profit-making tennis club which obtains most of its gross receipts from season tickets, can be a taxable club (Letter Com'r Best to M. Sieger Feb. 16, 1966). A similar ruling has been applied to a profit-making beach club (Letter Com'r Best to Freedman June 28, 1965). Municipal recreational facilities, however, have been held exempt even though they receive "seasonal charges" if they are open to everyone in the municipality on a non-discriminating and non-exclusive basis (Opinion of Counsel Nov. 29, 1966).

I think it is sufficient to point out that the transcript in the Grand Slam Bridge Club case contains no evidence of season tickets or other indicia of a continuity of "membership" and no evidence that admission is restricted to a privileged few.

PLACE OF AMUSEMENT

The taxpayer's main argument is that a fee collected by a bridge club is "an entry fee" which is charged "exclusively to the participant for participation." "No charge is payable for admission to the playing rooms..." Such a charge, therefore, is not an admission charge.

The point that is being made here is that the tax on admissions is levied only on admissions to a "place" of amusement and the fees charged by the bridge club are not a condition on the right of entry into any particular place but rather are a condition only on participation in a game.

I agree with the taxpayer. As is explained below, our tax is levied on fees charged to enter a "place of amusement" as distinguished from fees charged for the use of a facility of amusement. There is precedent for the taxpayer's position in rulings under similar taxes imposed by the Federal Government and the State of Missouri.

The former Federal tax on admissions exempted bridge clubs. That tax was levied on any "admission to any place" (I. R. C. § 4231). A regulation stated that the word admission means "the right or privilege to enter into a place" (Reg. (43) 101.2 (a)), and that a "place" means "a definite enclosure or location." (Reg. (43)101.3).

Without mentioning any provision of the statute or regulations, a ruling of the Internal Revenue Service exempted any "charge being made only for the privilege of participating" in a card game. The charge "is considered to be a payment for the privilege of playing cards rather than a payment for admission." (Rev. Rul. 56-545, 56-2 C. B. 827). Thus, under the Federal tax a participation fee in a bridge game was exempt presumably because it was not a condition for entry into "any place."

The only other state where this problem seems to have arisen is Missouri and the rule there would support the taxpayer's argument here. The Missouri Sales tax appears to be levied on fees paid to a "place" of amusement and does not exempt sporting activities. Yet they exempt "charges made for playing...pool...card games...and charges for participation in games or athletic events in which the participant as a player pays a fee..." (CCH Missouri ¶ 60-115).

Bridge clubs were taxable under the former New York City tax on amusements. However, that tax was apparently imposed on "facilities" as well as "places" of amusement. The enabling act for that tax authorized it to be levied on "admissions to...and charges for entertainment, amusement or use of facilities therefore, including theaters...ping pong tables and other similar places or facilities of entertainment or amusement (Laws of 1947, chap. 278 § 1(d) as amended by Laws 1948, Chap. 651).

That tax was actually levied, in 1951, in the following terms: a tax on any "admission charge...to or for the use of any place of amusement" (N.Y.C. Adm. Code § G46-2.1) and place of amusement was defined to include "facilities of entertainment or amusement including amusement devices...whether or not such devices are contained in an enclosure," (N.Y.C. Adm. Code § G 46-1.4).

New York City ruled that their admissions tax applied to charges for participating in a bridge game. A bridge club was considered a place of amusement and a charge for the use of its facilities was considered to be a taxable admission charge (Letter Mr. Weiner to Dannenburg re: Mayfair Bridge Club, Inc. September 10, 1954; Letter Mr. Weiner to Colony Club, Dec. 2, 1954).

The New York State Sales Tax is imposed upon "any admission charge... to or for the use of any place of amusement..." (Tax Law 1105 (f) (11). A place of amusement is defined as "any place where any facilities for entertainment, amusement, or sports are provided." Our courts have held that a coin-operated amusement device such as a "bowling game" is not a "place" of amusement although it is a "facility" for amusement, so that the charge for playing the device is not taxable as an admission charge (Bathrick Enterprises v. Murphy 50 Misc. 2d 215; 23 N.Y. 2d 664).

At least one statement in the proposed sales tax regulations seems to imply that an entry fee to a non-sporting activity would be taxable. Reg. 528.11 (c) example 3 states that "a fee paid by a patron to enter a competitive contest, such as a golf tournament, is an admission charge for participation in a sporting activity and is not taxable." There is no doubt that such a fee is an admission charge. This exemption is based, presumably on the nature of the activity as a sporting activity and not on the factor of participation.

It may be possible to distinguish a bridge game from the "bowling game" at issue in Bathrick so as to characterize the bridge game as a place of amusement. Thus, a real bowling alley has an area marked on the floor in which the participant must stand and could therefore be considered a place and not just a facility. Likewise, in a bridge game, the participant is expected to occupy a seat at a table which could be considered to be a place of amusement.

However, I believe the common sense of the situation is otherwise and the precedent of the Federal and Missouri rulings would be most persuasive to an appellate court.

SPORTING ACTIVITY

If, contrary to my opinion above, it is held that a bridge club is a "place of amusement," then a tax under § 1105 (f) will be levied unless bridge is a sporting activity.

I am of the opinion that duplicate bridge is not a "sporting activity." This is the settled meaning of the statute as interpreted by the Income Tax Bureau.

Mr. Tierney ruled on October 18, 1965 that bridge was a participating sport (letter to Barclay Bridge Club, Inc.) Mr. Best, however, has since ruled that bridge was not a participant sport. (Letters, rulings dated May 17, 1966, June 22, 1968 and July 6, 1966).

I can find no other tax statute which involves the interpretation of "sport". Some old Sunday blue law statutes used the word, but in such a different context as to give us no help. (See Mc Kinneys Statutes, § 239).

The dictionaries give the following information: Websters Third unabridged dictionary defines "sport" used as an adjective as "of relating to, or suitable for sports and esp. outdoor sports..." when used as a noun, sport is "(1a): something that is a source of pleasant diversion...(b) obs; sexual dalliance...(c) obs; a theatrical performance (d): a particular play, game or mode of amusement; as (1) a diversion of the field (as bowling, hunting, fishing, racing or other athletic games): also; any of various games (as bowling, rackets, basketball) or comparable diversions usu. played under cover (2) a game or contest esp. when involving individual skill or physical prowess on which money is staked."

The Random House unabridged dictionary defines "sporting" as an adjective relating to "open air or athletic sports", pursuits "involving betting or gambling or inducing the taking of risk." "Sport" as a noun is defined as "(1) an athletic activity requiring skill or physical prowess and often of a competitive nature, as racing, baseball, tennis, golf, bowling, wrestling, boxing, hunting, fishing, etc. (2) a particular form of this, esp. in the out of doors. (3) diversion; recreation; pleasant pastime."

Card games are considered to be games rather than sports under the category of recreation in the subject classification of books adopted by the Library of Congress.

The tax applied generally, of course, to charges for admission to places of amusement with the exception of charges for "admission to or use of, facilities for sporting activities in which such patron is to be a participant, such as bowling alleys and swimming pools." The statute does not exempt participation in all activities, sporting and non-sporting, which otherwise would be taxable activities. The word "sporting", therefore, must carry a meaning which distinguishes taxable from non-taxable activities. "Sporting" must mean something other than "amusement." This would automatically exclude from consideration at least one of the definitions popularly given to the word "sport": "any activity or experience that gives enjoyment or recreation" (Websters New World Dictionary as quoted on page 34 of the minutes of the hearing).

The position of the Sales Tax Bureau on this issue is stated in a proposed ruling number 560.1. That ruling excludes all card games from the meaning of "sporting activities" as used in Tax Law § 1105 (f)(1). It also holds that board games and "midway" games are not sporting activities. A ruling holding that a bridge game is a sporting activity would jeopardize the position of the bureau on board games and midway games as well as card games. The proposed ruling of the Sales Tax Bureau interprets the term "sporting activities" in the light of the examples in the statutes of bowling and swimming to mean physical activities requiring "vigorous or energetic action." This reasoning is valid as one method of statutory interpretation (N.Y. Jur. "Statutes" § 129; Mc Kinneys Statutes § 239).

The ruling states that certain factors are to be considered in classifying any activity. These factors include the necessity on the part of the participant of physical strength and physical dexterity, agility and coordination. Card games would not qualify under such tests. The other factors to be considered are the necessity of skill and the existence of recognized contest rules. These factors would tend to qualify duplicate bridge as a sport.

The ruling also gives a lengthy list of activities deemed to be "sporting activities." My own examination of this list leads me to conclude that the principal characteristic common to all of them and distinguishing them from the activities excluded is the necessity for physical activity coupled with a high degree of coordination and balance involving the whole body and are not just part of it. There are a few items, however, which are debatable in terms of such a test: These are croquet, slot car racing and shuffle board. Croquet and shuffle board perhaps do meet this test with respect to the people who typically participate in them (older people). The most extreme item on the list is, undoubtedly, slot car racing and this was the subject of a Law Bureau opinion which overruled previous Sales Tax Bureau rulings. Slot car racing is exactly like running a toy electric train, except that it is done against competition. The Law Bureau apparently accepted the taxpayer's argument that slot car racing was similar to bowling in that an object must be kept within the confines of a track or alley by the manipulation of a few fingers on the hand. My own feeling is that an obvious and relevant distinction exists in that the bowler is standing and running and using his sense of balance and coordination while the slot car racer is standing still or sitting down and using no part of his body except the fingers which operate the dial which runs the car. In fact, the slot car racer is doing no more than those who play the games classified as typical taxable midway games. One midway game closely analogous involves two people who operate trigger mechanisms which control miniature figures clothed as pugilists in such a way that they knock each other down. This would seem to be as much a sport as slot car racing, especially if the two participants kept score.

In contrast to the activities which we recognize as sporting activities (with the exception of slot car racing), duplicate bridge involves little or no physical activity. While the fingers are manipulated when handling cards, even this is not essential to the game as I suppose an armless man could have someone else do that for him. The amount of physical activity involved in writing this memo seems equally as great as in playing bridge.

The distinction between card games and activities recognized as sports can be maintained on another ground: that card games are not sports within the ordinary meaning of that term. This reference to ordinary usage is not one of the "factors" explicitly recognized by the Sales Tax Bureau but I think it should be. It would be helpful in characterizing other activities. For instance, how, otherwise, can we distinguish hiking, a sport, from square dancing, ruled not a sport, (Letter of Counsel to A. E. Avery April 18, 1966).

It is possible that the Commission could take another approach to this problem, an approach which would exempt bridge games as sports. Apparently the broad purpose of the admissions tax is to tax spectators though movies and plays have been exempted. It would be consistent with this broad purpose to exempt all activities of any kind in which the patron participates. This could be done under the present statute by accepting the broadest possible interpretation of "sporting activity" and essentially equating it with any amusement activity. This would make some words of the statute redundant, but that is not a cardinal sin. This would also avoid the problems of interpretation we have been having under the present approach.

However, as already stated, I believe the settled interpretation of this statute should be followed and this excludes card games from the category of sporting activities. This seems to me to be consistent with common usage and the intent of the legislature.

Floyd H. Wright

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application of GRAND SLAM CLUB, INC. For a Hearing to Review a Determination of Sales Taxes due under Article 28 of the Tax Law for the periods ending May 31, 1967, and August 31, 1967.	DETERMINATION

Grand Slam Club, Inc. having applied pursuant to Tax Law Section 1138 for a hearing to review a determination of sales taxes due under Article 28 of the Tax Law for the periods ending May 31, 1967 and August 31, 1967 as stated in a notice to the applicant dated April 16, 1968; and a hearing having been held at the office of the State Tax Commission, 80 Centre Street, New York City on June 13, 1968 before Vincent P. Molineaux, Hearing Officer and the record and proceedings having been duly examined and considered,

The State Tax Commission finds that:

1. The taxpayer, Grand Slam Club, Inc., is a stock corporation organized in New York State in April 1963. It has six shareholders, five officers and two employees. The taxpayer corporation has no requirement or authority for any person or class of person to have the status of a "member."

2. Taxpayer's sole activity is to conduct games of duplicate bridge.

3. The taxpayer is franchised by the Greater New York Bridge Association which is a "unit" of the American Contract Bridge League.

4. The American Contract Bridge League is a non-profit membership corporation organized in New York State in 1937 with 200,000 members in the United States. The League is composed of 24 districts

each of which is composed of several "units" each in turn consisting of several "clubs."

5. Taxpayer conducts its games of duplicate bridge under the rules of the American Contract Bridge Association and is sanctioned by that Association to award "master points" to those players who score high as a recognition of their skill in the game.

6. Membership in the American Contract Bridge League is secured by the payment of a $3.00 annual fee, but such membership does not entitle an individual to play at the taxpayer's games.

7. The taxpayer charges a fee to each individual participating in its duplicate bridge games of $1.50 or $1.75. The higher fee of $1.75 (rather than $1.50) is charged to those participants who wish to have recorded "master points."

8. There is no person or class of persons who have special privileges as participants in or spectators of the games.

9. Taxpayer charges no fee to individuals who enter its premises merely to watch the games.

10. The participants in the game act solely to compete as individuals in said game against the other participants and do not act in concert with other participants for any common purpose; no provision is made on the premises for lounging facilities or other inducements to social intercourse.

11. No tangible personal property is given as a prize in these games.

12. Duplicate bridge is a game of skill and not of chance played according to commonly recognized contest rules. It does not involve any high degree of physical activity or bodily coordination and balance.

Based upon the foregoing findings, the State Tax Commission DETERMINES:

A. The taxpayer is a separate and distinct legal entity from the American Contract Bridge League and the Greater New York Bridge Association; dues paid to either the League or Association are not deemed dues paid to the taxpayer; fees paid to the taxpayer are not deemed dues to either the League or Association.

B. The taxpayer is not a club within the scope of the tax on club dues imposed by the Sales Tax Law Section 1105 (f) (2); and even if it were a club it is not a "social or athletic" club within the scope of that tax.

C. The determination of sales taxes due, herein under review cannot be supported under Tax Law Section 1105 (f)(2) imposing a tax or club dues.

D. The fees charged by taxpayer are charged for participation in the game of duplicate bridge and not for entrance into a "place of amusement," (Compare U.S. Int. Rev. Serv. Rev. Rul. 56-545, 56-2 Cum. Bul. 827).

E. Fees charged for the use of facilities of amusement, but not for entrance into a place of amusement are not taxable under Section 1105 (f)(1) (Bathrick Enterprises v. Murphy 50 Misc. 2d 215, 23 N.Y. 2d 664).

F. Contract or duplicate bridge is not a sporting activity within the meaning of Tax Law Section 1105 (f)(1), imposing a tax on admissions.

G. The determination of tax dated April 16, 1968 for the periods ending May 31, 1967 and August 31, 1967 is erroneous in law and fact.

Dated, Albany, New York, June 30, 1969.

Joseph H. Murphy
President

Bruce Manley
Commissioner

Milton Koerner
Commissioner