

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

Aljanor Enterprises, Inc.

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) 8/31/67

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

State of New York
County of Albany

Janet Wright

, 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 10th day of March, 1970, she served the within

Notice of Decision (or Determination) by (certified) mail upon Aljanor

Enterprises, Inc. (representative of) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Aljanor Enterprises, Inc.

Nacy Road

Eye, New York 10580

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

10th day of March, 1970

Maria Buckley

Janet Wright

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

Aljanor Enterprises, Inc.

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) 8/31/67

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State of New York
County of Albany

Janet Wright, 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 10th day of March, 1970, she served the within Notice of Decision (or Determination) by (certified) mail upon Howard Menig, Esq. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Howard Menig, Esq.
770 Lexington Avenue
New York, New York 10021

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

10th day of March, 1970.

Marie Buckley

Janet Wright

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

Rye Racquet Club

For a Redetermination of a Deficiency or
a Refund of Sales and Use
Taxes under Article(s) 28829 of the
Tax Law for the (Year(s) 8/1/65 - 8/31/66 and 8/31/67

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

State of New York
County of Albany

Janet Wright, 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 10th day of March, 1970, she served the within
Notice of Decision (or Determination) by (certified) mail upon Rye Racquet
Club (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Rye Racquet Club
Macy Road
Rye, New York 10580

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

10 day of March, 1970

Marc Buckley

Janet Wright

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

Rye Racquet Club

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)) 8/1/65 -
8/31/66 and 8/31/67

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

State of New York
County of Albany

Janet Wright

, 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 10th day of March, 19 70, she served the within
Notice of Decision (or Determination) by (certified) mail upon Howard Henig,
Esq. (representative of) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Howard Henig, Esq.
770 Lexington Avenue
New York, New York 10021

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

10th day of March, 19 70

Maria Buckley

Janet Wright

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application :
of :
RYE RACQUET CLUB :
To Review Assessments of Sales and Use :
Taxes Under Articles 28 and 29 of the :
Tax Law for the Period 8/1/65 - 8/31/66 :
and for Quarterly Periods thereafter to :
August 31, 1966, and for the Period Ended :
8/31/67 :

DECISION

In the Matter of the Application :
of :
ALJANOR ENTERPRISES, INC. :
To Review an Assessment of Sales and Use :
Taxes Under Articles 28 and 29 of the Tax :
Law for the Period Ended 8/31/67 :

Rye Racquet Club, Inc., and Aljanor Enterprises, Inc., having filed applications for revision of taxes assessed pursuant to Articles 28 and 29 of the Tax Law, constituting the Sales and Use Tax Law, and a hearing having been held at the offices of the Department of Taxation and Finance, 80 Centre Street, New York, New York, on August 18, 1968, before Vincent P. Molineaux, Esq., Hearing Officer for the State Tax Commission, and the record having been duly examined and considered, the Tax Commission hereby finds that:

(1) By notices and demands for payment of sales and use taxes due, Notice Number 90,600,292, dated December 1, 1966, and Notice Number 90,707,394, dated April 15, 1968, the Department of Taxation and Finance, pursuant to Tax Law § 1138, assessed taxes against

the Rye Racquet, Inc., a membership corporation (Vendor Identification Number NY7177469). The State Tax Commission assessed taxes for the period from August 1, 1965 to August 31, 1965, and for quarterly periods thereafter up to the period ending August 31, 1966, which with interest and penalties were in the total amount of \$7,033.17 under the said earlier notice, as of the date thereof; and under the later notice it assessed further taxes for the period ended August 31, 1967, in the total amount of \$1,108.54, including penalty and interest up to the date of the said later notice.

By a notice of determination and demand for payment of taxes, Notice Number 90,707,306, dated April 15, 1968, the Department on a finding that returns were not filed, assessed taxes determined to be due for the period ended August 31, 1967, in the amount of \$1,108.54, including penalty and interest due as of the date of the said assessment, against Aljanor Enterprises, Inc., and Rye Racquet Club, Inc.

(2) Rye Racquet Club, Inc., was a domestic non-profit membership corporation with its principal office at Harrison, New York, in Westchester County.

Its annual membership fee was in the amount of nine dollars.

(3) Aljanor Enterprises, Inc., was a domestic stock corporation whose principal place of business was at Harrison, New York in Westchester County.

(4) The two corporations had the same president and also had other corporate officers in common; these persons controlled the operations of the two corporations.

(5) Aljanor Enterprises, Inc., was a lessee of certain real property in Rye, New York, and in a building on these premises, constructed five indoor tennis courts and a locker room.

Under an instrument denominated a lease, Rye Racquet Club, Inc., as tenant, agreed to pay to Aljanor Enterprises, Inc., as the landlord, a yearly rental of \$2,400.00. Under this lease's provisions the courts remained under the control of the landlord, and the tenant had the right to have its members use the courts and facilities upon paying such charges as the landlord, might fix. The landlord further agreed not to permit the courts to be used except by members of the Rye Racquet Club Inc. or their guests.

A written agreement or application form provided by Aljanor Enterprises, Inc., which was to be signed by prospective patrons set forth a schedule of rates for the courts at certain stated times of the day throughout a season running from October 1 to April 30. The rates ranged from \$240.00 to \$375.00 for the season, and for the renting of open times not so subscribed for, hourly rates of from eight to twelve dollars an hour were charged depending on the time of day chosen. These fees were paid to Aljanor Enterprises, Inc.

(6) Concededly the entity of the Rye Racquet Club, Inc., was used to promote patronage of the tennis courts for the eventual profit of the owners of Aljanor Enterprises, Inc., and the character of the Rye Racquet Club, Inc. as a private club was intended to serve and did serve as an inducement to prospective patrons of the tennis courts to subscribe to and pay for the use of the tennis courts, it is found.

Upon the foregoing facts and findings the State Tax Commission hereby

DECIDES:

A. That Rye Racquet Club, Inc. and Aljanor Enterprises, Inc., were engaged in a joint undertaking for profit which was to inure to the shareholders of Aljanor Enterprises, Inc.

B. That pursuant to provisions of Tax Law Section 1105(f)(6), which imposes the tax upon the dues paid to any (social or) athletic club if the dues of an annual member are in excess of \$10.00 a

year, and pursuant to Tax Law Section 1101(d)(6) which defines dues to include also membership fees and any charges for the use of sports privileges or facilities, and pursuant to Tax Law Section 1101(d)(13) which defines a social or athletic club as any club or organization of which a material purpose or activity is social or athletic, the membership fees paid to the Rye Racquet Club, Inc. by its members and the money amounts paid to Aljanor Enterprises, Inc., as charges for the use of the tennis courts were both properly held subject to the tax.

The provision of Tax Law Section 1105(f)(1) which excepts from liability for the tax imposed on admissions to places of amusement or for the use of a place of amusement, admission charges to facilities for sporting activities in which the patron paying the charge is to be a participant, is not intended to govern the fees and charges collected here, where the use of such facilities for participant sports were available only to members of a "social or athletic club" and membership in such club was required of those using the facilities.

Admission to facilities for participant sports are excepted from tax under T.L. s 1105(f)(1) in the interest of promoting public health, but the provision imposing the tax on membership fees and dues of social or athletic clubs does not embody any like exceptions. Membership fees and dues in social or athletic clubs (including charges made by them for using sports facilities) are considered to be in the nature of a luxury expenditure which the statute means to subject to tax notwithstanding that these charges may be for participant sports. Notwithstanding that the respective charges by the athletic club and by a separate stock corporation are structured to avoid the tax, both entities are "social or athletic clubs" within the meaning intended, it is held.

C. That the assessments Notice Numbers 90,600,292 and 90,707,394, set forth in paragraph 1 hereof, are restated to constitute an assessment against both Eye Racquet Club, Inc., the taxpayer named, Aljanor Enterprises, Inc., and as so restated are affirmed; assessment Notice Number 90,707,306, set forth in paragraph 1 hereof, is affirmed.

The said taxes, proper, so assessed are subject to further interest at the reduced rate of six percent (in accordance with provisions of Tax Law Section 1145) from the dates of the said several assessments to the dates of payment thereof, provided that payment is made not later than thirty days from the date of mailing of notice of the Decision herein; but if not then paid, the said amounts of taxes assessed are subject instead to further interest at six percent to the date of mailing of notice of this Decision, and to further interest at the rate of one percent per month on the said amounts of the said taxes assessed from the said date of mailing of notice of this Decision until the date of payment.

DATED: Albany, New York,


March 9, 1970

STATE TAX COMMISSION

PRESIDENT



COMMISSIONER



COMMISSIONER