

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

BREEZY POINT SURF 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)

9/1/71 - 5/31/74

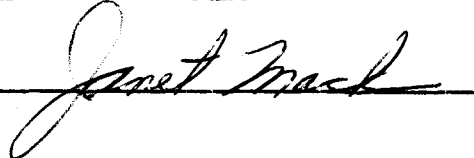
State of New York  
County of Albany

Violet Walker, 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 June, 1977, she served the within  
Notice of Decision by ~~(certified)~~ mail upon Breezy Point Surf 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: Breezy Point Surf Club, Inc.  
223 St.  
Breezy Point, 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 the)~~  
~~XXXXXX~~ 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 June, 1977.





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STATE TAX COMMISSION

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9/1/71 - 5/31/74

State of New York  
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she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 14th day of June , 1977 , she served the within  
Notice of Decision by (~~certified~~) mail upon Joseph D. Becker, Esq.  
(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Joseph D. Becker  
Fox, Glynn & Melamed  
299 Park Avenue  
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 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 June , 19 77

Janet Mack

Violet Walker



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

TAX APPEALS BUREAU

STATE CAMPUS  
ALBANY, N.Y. 12227

June 14, 1977

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

TELEPHONE: (518) 457-1723

Breezy Point Surf Club, Inc.  
223 St.  
Breezy Point, New York

Gentlemen:

Please take notice of the **Decision**  
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,

**PAUL E. COBURN**  
Supervising Tax  
Hearing Officer

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 Petition	:	
of	:	
BREEZY POINT SURF CLUB, INC.	:	
for Revision of a Determination or	:	DECISION
for Refund of Sales and Use Taxes	:	
under Articles 28 and 29 of the Tax	:	
Law for the Period 9/1/71 - 5/31/74.	:	

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Petitioner, Breezy Point Surf Club, Inc., 223 St. Breezy Point, New York, has filed an application for revision of a determination for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period September 1, 1971 through May 31, 1974. (File No. 00492).

A formal hearing was held before Harvey B. Baum, Esq., Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, Room 65-31, New York, New York, on November 3, 1976, at 1:15 P.M. Petitioner appeared by Joseph D. Becker, Esq., of Fox, Glynn & Melamed. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Howard Herman, Esq. of counsel).

ISSUE

Whether monies paid by members to a cabana club, which is a not-for-profit corporation, for use of cabanas on a seasonal basis of more than 90 days, is subject to the sales tax under Section 1105(f)(2) of the Tax Law (Articles 28 and 29).

FINDINGS OF FACT

1. A Notice of Determination and Demand for Payment of Sales and Use Taxes Due, dated February 21, 1975 (File No. 11-16933300) was issued by the Sales Tax Bureau and charged the petitioner with a sales and use tax deficiency for the period September 1, 1971 through May 31, 1974, indicating an amount due of \$91,384.30, plus \$27,869.14 in penalty and interest, for a total allegedly due of \$119,253.44.

2. A Consent Extending Period of Limitation for Assessment of Sales and Use Taxes under Articles 28 and 29 of the Tax Law, dated July 9, 1974, was duly executed by the parties pursuant to Section 1147(c) of the Tax Law.

3. Petitioner timely filed an application for a hearing to review the determination for the aforestated period, dated March 11, 1975.

4. The petitioner had duly filed New York State local sales and use tax returns (ST-100) for the subject period, indicating that sales and use taxes had not been paid on monies received by club members for the use of its cabanas.

5. Petitioner is a not-for-profit corporation in the business of operating a beach club for members only, which includes facilities such as tennis courts, swimming pool, cafeteria, restaurant, and dancing facilities.

6. The club also offers, to members only, the use of cabanas on a seasonal basis only (from May through September). The leasing of these cabanas is purely optional, but must be taken on a seasonal basis, and gives the lessee exclusive possession thereof for the season. The cabanas are of permanent wooden construction, with separate rooms, and with kitchen, bath, and sleeping facilities.

CONCLUSIONS OF LAW

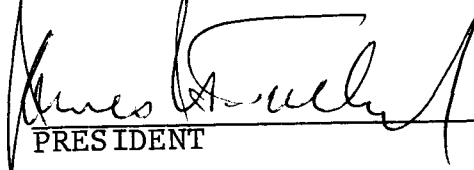
A. That the rental of cabanas by club members must be considered "dues" under the meaning and intent of Section 1101(d) of the Tax Law as including "any charges for social or sports privileges or facilities," and thus a sales and use tax must be imposed under Section 1105(f)(2) of the Tax Law. As there is no specific exemption for the leasing of real property even if these facilities be considered such, the taxpayer has the burden of proving that these rentals come within the exception of Section 1105(e) of the Tax Law. This burden has not been sustained inasmuch as these cabanas cannot be considered a "hotel" within the meaning of Section 1101(c)(1) of the Tax Law.

B. That the petitioner, Breezy Point Surf Club, Inc., had a reasonable cause for failing to pay these taxes for the subject years.

C. That the petition of Breezy Point Surf Club, Inc. is granted to the extent that the interest, in excess of the minimum interest, and the penalty imposed pursuant to Section 1145(a) of the Tax Law is waived and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York  
June 14, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER