

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

SHIRTS AND SKIRTS SQUARE DANCE CLUB

NORMAN BROCIUS, President

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Sales and Use :  
Taxes under Article(s) 28 & 29 of the :  
Tax Law for the Year(s) or Period(s) :  
August 1, 1965 through May 31, 1971.

AFFIDAVIT OF MAILING

State of New York  
County of Albany

Jean Wager, 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 13th day of August, 1976, she served the within Notice of Determination by ~~(certified)~~ mail upon Shirts and Skirts Dance Club Brocious, Pres. <sup>Norman</sup> ~~(representative of)~~ the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Shirts and Skirts Square Dance Club  
Norman Brocious, President  
16 Iris Drive  
Apalachin, New York 13732  
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

13th day of August , 1976.

Janet Mack

TA-3 (2/76)

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

SHUFFLIN SHOES SQUARE DANCE CLUB

ASHTON ELLIOTT, President

For a Redetermination of a Deficiency or  
a Revision of a Determination or a Refund  
of Sales and Use  
Taxes under Article(s) 28 & 29 of the  
Tax Law for the ~~Year(s)~~ or Period(s)  
August 1, 1965 through May 31, 1971

AFFIDAVIT OF MAILING

State of New York  
County of Albany

Jean Wager, 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 13th day of August, 1976, she served the within Notice of Determination by ~~(certified)~~ mail upon Shufflin Shoes Square Dance Club, Ashton Elliott, President(~~representative of~~) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Shufflin Shoes Square Dance Club  
Ashton Elliott, President  
1225 Chenango Street  
Binghamton, 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

13th day of August, 1976.

Jean Wager

Jean Wager

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition of  
SHUFFLIN SHOES SQUARE DANCE CLUB :  
ASHTON ELLIOTT, President and :  
SHIRTS AND SKIRTS SQUARE DANCE CLUB :  
NORMAN BROCIOS, President :  
For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Sales and Use :  
Taxes under Article(s) 28 & 29 of the :  
Tax Law for the Year(s) or Period(s) :  
August 1, 1965 through May 31, 1971

AFFIDAVIT OF MAILING

State of New York  
County of Albany

Jean Wager, 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 13th day of August, 1976, she served the within Notice of Determination by ~~certified~~ mail upon Angelos Peter Romas, Esq. & Joel Scelsi, Esq. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Angelos Peter Romas, Esq.  
and Joel Scelsi, Esq.  
101 Washington Avenue  
Endicott, New York 13760  
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

13th day of August, 1976.

Janet Mack

Jean Wager



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

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

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

August 13, 1976

TELEPHONE: (518) 457-3850

Shufflin Shoes Square Dance Club  
Ashton Elliott, President  
1225 Chenango Street  
Binghamton, New York

Gentlemen:

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

Please take further notice that pursuant to  
Section(s) **1138 & 1250** 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 B. Coburn  
Supervising Tax  
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

TAX APPEALS BUREAU

STATE CAMPUS  
ALBANY, N.Y. 12227

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

August 13, 1976

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

Shirts and Skirts Square Dance Club  
Norman Brocius, President  
16 Iris Drive  
Apalachin, New York 13732

Gentlemen:

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**Paul B. 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 Application	:	
of	:	
SHUFFLIN SHOES SQUARE DANCE CLUB	:	
ASHTON ELLIOTT, President	:	
and	:	DETERMINATION
SHIRTS AND SKIRTS SQUARE DANCE CLUB	:	
NORMAN BROCIIOUS, President	:	
for a 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 through May 31, 1971.	:	

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Applicants, Shufflin Shoes Square Dance Club, 1225 Chenango Street, Binghamton, New York, and Shirts and Skirts Square Dance Club, 16 Iris Drive, Apalachin, New York 13732 (hereinafter called Shufflin Shoes and Shirts and Skirts) applied for a 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 through May 31, 1971.

Formal hearing sessions were held at the offices of the State Tax Commission, Binghamton, New York, on June 24, 1973 and also on February 25, 1975 at Syracuse, New York, before L. Robert Leisner, Hearing Officer. On the application of Mr. Romas, a motion for

consolidation of the trial of all of the above cases was granted at the commencement of the first session. All of the taxpayers were represented by John A. Scelisi, Esq. and Angelos Peter Romas P.C. The Sales Tax Bureau was represented by Saul Heckelman, Esq. (James A. Scott and Alexander Weiss, Esqs., of counsel).

#### ISSUES

I. Were the applicant organizations exempt under section 1116 of the Tax Law?

II. Were the payments for square dance instructions subject to sales tax?

#### FINDINGS OF FACT

1. The taxpayers, Shufflin Shoes Square Dance Club and Shirts and Skirts Square Dance Club, timely filed New York State sales and use tax returns for the period August 1, 1965 through May 31, 1971.

2. Notices of Determination of Sales and Use Taxes (and penalties) for the period August 1, 1965 through May 31, 1971 were issued on June 20, 1971, against Shufflin Shoes Square Dance Club under Notice No. 90,051,869 for \$4,911.00 and similarly against Shirts and Skirts Square Dance Club under Notice No. 90,051,812 for \$1,445.25.

3. The assessments are based solely upon estimates. The groups are loosely organized and records were not available at the

time of the audit, but at the last session the taxpayers' representatives produced the records and it was agreed that if there is any liability, it shall be computed from the records if promptly and suitably presented. All of the applicants have acted in good faith throughout.

4. All of the taxpayers applied for a revision of the determination of the deficiencies in sales tax and penalties.

5. New York State has an official policy of encouraging the performing arts exemplified by the annual contribution of New York State to the "Council on the Arts" and also exemplified by the bicentennial celebrations to perpetuate American customs and culture.

6. Both western style and eastern style square dances are among the few indigenous American folk dances and are part of the American cultural heritage.

7. "Eastern style" square dance is a simple dance with twelve basic movements to it and requires a minimum of instruction. On the other hand, "western style" square dance has eighteen hundred movements which require extensive instruction.

8. The instruction required to learn western style square dancing is usually given under an experienced instructor with a curriculum which has been systematically standardized.

9. To obtain instruction, the ideal unit is four people who would find the hourly cost of instruction too expensive unless they were affluent. To spread the instructional cost, the pattern has developed to have people get together informally to share the cost of renting the instructional facility, hiring the instructor and buying instructional materials in bulk.

10. The people group themselves into beginners, intermediate and advanced groups. These groups often are sponsored by Y.M.C.A.'s, town recreational authorities which are funded by state money (e.g. Rochester area), churches and school district adult education programs. Shirts and Skirts group was originally sponsored and the instruction arranged through the Vestal School District Adult Education Program.

11. The instructional facilities are sometimes made available to the group for free and when such facilities are not available, they are rented.

12. Other characteristics of the groups herein were:

- Their sole purpose was to receive instruction.
- Anyone could receive instruction provided he had the requisite instructional background, i.e. beginner needed no background but intermediate and advanced classes required prior requisite instruction.

- There were no membership requirements or election thereto and thus no "belonging" to a group. There was merely a payment for pre-paid instruction to be furnished to a group.
- No bylaws or minutes existed.
- There were no nominations and election of officers and no Board of Directors.
- The organizer of the group to receive a series of lessons, took on the role of finding a facility and an instructor (caller), making arrangements, and collecting pro rata share of costs from each student for the lesson series. Sometimes these functions were handled by two separate people, one person took care of the funds and the other person took care of the other matters. They acted as agents for the instructor.
- The instructor was hired for a series of 20 to 30 lessons, usually from September to the following June. Students paid a pro rata share of the entire series either in one lump sum or spread over the instructional period.

- A student could sell or assign his unused portion of prepaid instruction fee for the balance of a lesson series to another person (who had requisite instructional background for that level of instruction) who then was entitled to instruction for balance of the lesson series.
- No fee was charged to people who came and watched the instruction, but they were not allowed to participate.
- Persons who were in an instructional group in a nearby area could come to an instructional session of another group and by payment of a student guest fee could partake in the instruction, provided they had the requisite level of prior instruction.

13. The activity engaged in by the instructional group was strictly instruction and there was no form of competition involved except in the sense of competing with one's self to master the activity. In essence, the instruction was one of the continuing practice of the basic steps and building thereon, which was a continuing educational process.

14. Obtaining instruction was on a non-exclusionary basis. There was no such thing as "membership" in the sense that membership denotes a personal right to belong. In this case the right to instruction was freely assignable.

15. The people in the groups receiving instruction changed from year to year. These different instructional groups took on for themselves various names like Shirts and Skirts and Shufflin Shoes, but they were not an organized entity.

16. The member of the instructional class who collected the instructional fees did so as an agent on behalf of the instructor who undertook to instruct the class with the understanding that he would be freed of this bookkeeping task.

17. Both Ashton R. Elliott (Shufflin Shoes) and Norman Brocious (Shirts and Skirts) acted as agent for the instructor in the collection of the instructional fees only for the period from September 1970 through the Spring of 1971, the instructional period.

18. The instructional class ran from September of each year through the Spring of the following year. At no time did a class continue for a full annual period.

#### OPINION

The Sales Tax Bureau's theory of assessment appears to be based on the contention that the instructional fees which are collected by a member of the class on behalf of the instructor are dues which are paid to a "social or athletic club". The applicable statutory provisions are in part:

New York Tax Law section 1105. Imposition of Sales Tax:

"On and after June 1st, 1971, there is hereby imposed and there shall be paid a tax of four percent (4%) upon:

- (f)(2) The dues paid to any social or athletic club in this state if the dues of an active annual member ...are in excess of \$10.00 per year,..."

New York Tax Law section 1101. Definitions

- "(d)(6) 'Dues'. Any dues or membership fee including any assessment, irrespective of the purpose for which made, and any charges for social or sports privileges or facilities..."

New York Tax Law section 1116. Exempt Organizations

- "(a) Except as otherwise provided in this section, any sale or amusement charge by or to any of the following or any use or occupancy by any of the following shall not be subject to the sales and compensating use taxes imposed under this article:
- (4.) Any..., association,...organized and operated exclusively for...educational purposes...no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office;"

There is no provision taxing services of teachers, i.e. educational services, in the Tax Law.

In our opinion none of the applicants is a club within the scope of the tax on club dues imposed by Tax Law section 1105(f)(2).

They are informal groups of people who attend the same class receiving instruction in western style square dancing.

In many respects they are no different than a Sunday School Class which charges a fee.

The applicant in each case is not an organized group and has no elected officers or directors.

A club organized for conducting duplicate bridge games is not a social or athletic club within the meaning of Tax Law section 1105(b)(2) and is not taxable on fees charged to participants.

"The taxpayer has no requirement or authority for any person or class of person to have the status 'member'". In the Matter of Application of Grand Slam Club, Inc., State Tax Commission Decision June 30, 1969 - CCH NY Tax Reporter Section 60-150.30.

The right to instruction receivable from the instructor, which is purchased by the fee collected by a class member as agent for the instructor, is freely assignable. This is not characteristic of a membership in an organized entity.

These square dance instructional classes are not "clubs" for purposes of Tax Law section 1105(f)(2).

The instructional fees are not dues within Tax Law section 1105(f)(2) for several reasons:

First, "dues" denotes a charge or levy for the privilege of affiliation with a group having requirements of belonging of an exclusionary nature so as to give the status of "member", and upon whom the affiliation bestows certain privileges. In this case, the charge is for the purpose of and directly related to and solely for the cost of instruction and not for the privilege of "belonging to a group" or for the use or entrance to a club's facilities.

Second, the money collected is not paid to the group but is paid to the instructor, with the collecting member of the group acting as the agent of the instructor (who as a condition of giving the instruction does not want to be bothered with the bookkeeping problem).

Third, Tax Law section 1105(f)(2) speaks of "annual member". Since the class holds sessions only from September through the following June, the pupils cannot be said to be "annual members". They participate in the group only for a nine month period and may assign the unused lessons to another person.

Moreover, dues are within section 1105(f)(2) only if they are paid by "annual members". At best the class meets from September through June, and the "members" are members only for a nine month period.

The recipients of the instruction who attend the classes are not "members". The term "members" denotes affiliation to an organization having a clearly defined set of rules and regulations to which they are subjecting themselves for discipline. No such rules, regulations, penalties, etc. exist.

The instructional class is not a social or athletic club.

Its sole purpose is educational, i.e. receive instruction in a cultural phenomena of our cultural tradition, i.e. western style square dancing.

The instructional class is tax exempt under New York Tax Law section 1116(a)(4).

The instructional class at best can be said to be "an association" for "educational purposes".

The testimony clearly points out that the instructional class and the people meet strictly for educational purposes, i.e. instruction in western style square dancing.

The tax exempt status is in effect once the criteria of New York Tax Law section 1116(a)(4) are satisfied. The status is not obtained only after getting a certificate which is merely a prior administrative decision that the criteria are in fact fulfilled. The same applies under Subchapter F of the Internal Revenue Code of 1954 as amended. The applicants are in fact a non-profit

association existing exclusively for educational purposes and are exempt under section 1116(a)(4) of the Tax Law.

Both Norman Brocious (Shirts and Skirts) and Ashton R. Elliott (Shufflin Shoes) can be personally held liable for the instructional fees collected from September 1970 through May 1971 only if the instructional classes are found to be clubs, the instructional fees are found to be dues by annual members to a social and recreational club, and the clubs are not found to be tax exempt.

The instructional classes which re-form in September of each year and exist only through May of the following year, are not clubs, the instructional fees are not dues; and, in any event, the clubs are tax exempt under section 1116(a) of the Tax Law. There is no liability by either the instructional classes or by Norman Brocious and Ashton Elliott for the instructional fees that have been collected during the period September 1970 through 1971.

#### CONCLUSIONS OF LAW

A. In accordance with the above opinion, the applicants, Shufflin Shoes Square Dance Club and Shirts and Skirts Square Dance Club, are in each case an informal non-profit exempt organization existing exclusively for educational purposes under section 1116(a) of the Tax Law.

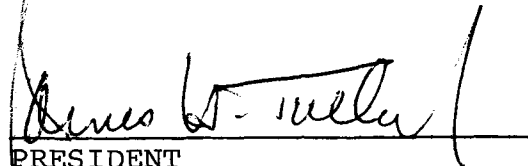
B. The square dance classes in these cases are not a social or athletic club.


C. The payments made for square dancing instructions are not dues, but are for educational purposes.

D. The assessments against the above applicants are cancelled.

DATED: Albany, New York  
August 13, 1976

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER