

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HAMPSHIRE COUNTRY CLUB, INC.

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Sales and Use
Taxes under Article(s) 28 and 29 of the
Tax Law for the ~~Year(s)~~ or Period(s)
September 1, 1970 through November 30, 1973.

State of New York
County of Albany

John Huhn, 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 December, 1978, ~~she~~ served the within
Notice of Determination by ~~(certified)~~ mail upon Hampshire Country
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:
Hampshire Country Club, Inc.
1107 Delance Cove Road
Mamaroneck, New York 10553

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~~
~~of the~~) petitioner herein and that the address set forth on said wrapper is the
last known address of the (~~representative of~~) petitioner.

Sworn to before me this

13th day of December, 1978.







STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

December 13, 1978

**Hampshire Country Club, Inc.
1107 Delance Cove Road
Mamaroneck, New York 10553**

Gentlemen:

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

You have now exhausted your right of review at the administrative level. Pursuant to section(s) **1138 & 1243** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **4 months** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,


Joseph Chyrywaty
Hearing Examiner

cc: ~~Regional Representative~~

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
	:	
of	:	
	:	
HAMPSHIRE COUNTRY CLUB, INC.	:	DETERMINATION
	:	
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 September 1, 1970 through	:	
November 30, 1973.	:	

Applicant, Hampshire Country Club, Inc., 1107 Delance Cove Road, Mamaroneck, New York 10553, filed an application 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 September 1, 1970 through November 30, 1973 (File No. 10154).

A small claims hearing was held before Joseph Chyrywaty, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 7, 1978 at 9:15 A.M. Applicant appeared by Warren Lesser, assistant treasurer. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Samuel Freund, Esq., of counsel).

ISSUE

Whether applicant is liable for the sales tax it collected on certain gratuity charges.

FINDINGS OF FACT

1. Applicant, Hampshire Country Club, Inc., timely filed New York state and local sales and use tax returns (ST-100) for the period September 1, 1970 through November 30, 1973.

2. On July 24, 1974, applicant filed a Consent Extending the Period of Limitation for Assessment of Sales and Use Taxes.

3. On January 17, 1975, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due to applicant for the period September 1, 1970 through November 30, 1973, assessing a tax due of \$4,261.86, plus penalties and interest of \$1,324.76, for a total due of \$5,586.62. The assessment was made as a result of a field audit of applicant's records, which audit revealed that applicant charged off \$4,261.86 from its sales tax accrual account. This amount represented the sales tax collected on that portion of the dining room service charges disbursed to employees as gratuities.

4. On March 11, 1975, applicant, Hampshire Country Club, Inc., filed an Application for Hearing to Review Determination.

5. Applicant is a country club which operates and permits its members to use a dining room. Employees of the dining room are paid a salary, plus a 15% gratuity on all food and beverages served. In order to eliminate negative cash flow problems, a

system was instituted to collect gratuity charges in advance from the members on an estimated basis. Members were billed \$50.00 per month from April through September for gratuities. A pool of special funds was thus created, out of which gratuities could be disbursed to employees when needed.

6. Applicant, Hampshire Country Club, Inc., charged its members sales tax on the \$50.00 per month gratuity charge.

7. Applicant paid the gratuities to its employees out of the special gratuity fund and used the surplus to finance general club activities. Sales tax was paid by applicant to New York State on the surplus portion of the gratuity fund.

8. Applicant debited its sales tax accrual account in the amount of \$4,261.86. This represented the sales tax collected from its members on the gratuity charges disbursed from the fund to the employees and concurrently credited as miscellaneous income. Although the accrual account was debited, the sales tax was not paid to New York State.

9. Applicant did not refund any portion of the sales tax collected on gratuity charges to its members.

10. Applicant maintained that charges for gratuities collected in advance from its members were nontaxable. It seeks to retain the sales tax collected from its members on that portion of the fund which represents the tax on gratuities disbursed to employees.

CONCLUSIONS OF LAW

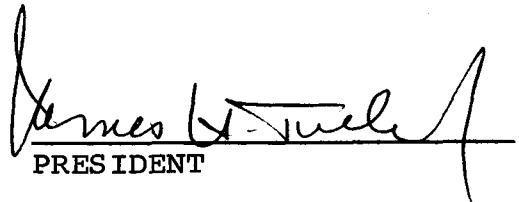
A. That having collected sales tax on the dining room service charges remitted by its members, applicant holds such tax as trustee for and on account of the State, pursuant to section 1132(a) of the Tax Law.

B. That applicant is required to pay to the State all monies collected as tax, pursuant to section 1137(a) of the Tax Law.

C. That the application of Hampshire Country Club, Inc. is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued January 17, 1975 is sustained.

DATED: Albany, New York
December 13, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER