

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

LAFAYETTE COUNTRY 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) :  
June 1, 1971 through May 31, 1974.

State of New York  
County of Albany

John Huhn

, being duly sworn, deposes and says that


~~XX~~ She is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 13th day of December , 19 78, ~~she~~ served the within  
Notice of Determination by (~~certified~~) mail upon Lafayette 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: Lafayette Country Club, Inc.  
Lafayette Road  
Jamesville, New York 13078

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 the)~~ petitioner.

Sworn to before me this

13th day of December , 1978



STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
LAFAYETTE COUNTRY CLUB, INC.

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
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Taxes under Article(s) 28 & 29 of the :  
Tax Law for the ~~XXXXXX~~ Period ~~(s)~~ :  
June 1, 1971 through May 31, 1974.


State of New York  
County of Albany

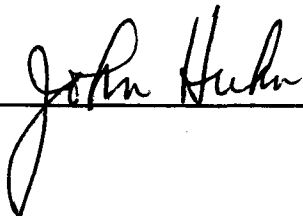
John Huhn , being duly sworn, deposes and says that  
she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 13th day of December , 1978, she served the within  
Notice of Determination by ~~(certified)~~ mail upon Edward S. Green, CPA  
(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Edward S. Green, CPA  
Suite 1650  
One Lincoln Center  
Syracuse, New York 13202  
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 December , 19 78.







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**


**Lafayette Country Club, Inc.  
Lafayette Road  
Jamesville, New York 13078**

**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 CHETWATT  
HEARING EXAMINER**

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 :  
LAFAYETTE 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 June 1, 1971 through May 31, :  
1974. :

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Applicant, Lafayette Country Club, Inc., Lafayette Road, Jamesville, New York 13078, 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 June 1, 1971 through May 31, 1974 (File No. 01612).

A small claims hearing was held before Joseph Chyrywaty, Hearing Officer, at the offices of the State Tax Commission, State Office Building, Syracuse, New York, on July 28, 1977 at 1:15 P.M. Applicant appeared by Edward S. Green, CPA. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Andrew Haber, Esq., of counsel).

ISSUES

I. Whether the greens fees and swimming pool fees of a guest which were billed to members of a golf and country club were subject to sales tax.

II. Whether the golf driving range fees of golf club members were subject to sales tax.

FINDINGS OF FACT

1. Applicant, Lafayette Country Club, Inc., filed New York State and local sales and use tax returns for the period August 31, 1971 through May 31, 1974.

2. On September 19, 1974 as the result of an audit, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant for taxes due of \$4,867.32, plus penalty and interest, for the period June 1, 1971 through May 31, 1974.

3. On January 16, 1975, the Sales Tax Bureau issued a Notice of Assessment Review to reflect applicant's payment on the agreed portion of the audit which consisted of purchases of supplies, repairs, building materials and kitchen equipment. The unagreed portion of the audit (at issue here) consists of taxes determined to be due on greens fees and swimming pool fees of guests which were billed to club members, and of the driving range fees of club members.

4. Lafayette Country Club, Inc. operated a golf and country club and offered other recreational activities such as swimming and a golf driving range. Members of the club were assessed and billed dues which entitled them to use the available facilities.

5. Members of Lafayette Country Club, Inc. invited guests to the club for the purpose of using the sporting facilities. Members of the club were charged and billed for their guests' use of the golf course and swimming pool. Commencing in May of 1973, applicant began charging and billing members for the use of the golf driving range.

6. Applicant, Lafayette Country Club, Inc., charged no sales tax on greens fees and swimming pool fees incurred by the club's members as a result of their guests' use of such facilities, nor on fees incurred by members for their own use of the driving range. Applicant took exception to the determination on the basis that sales taxes are not applicable to participating sports.

CONCLUSIONS OF LAW

A. That the greens fees and swimming pool fees of a guest which are billed to a golf and country club member, as well as the driving range fees of a club member, were dues within the meaning of section 1101(d)(6) prior to its amendment by Ch. 1004, Laws of 1973, effective September 1, 1973.

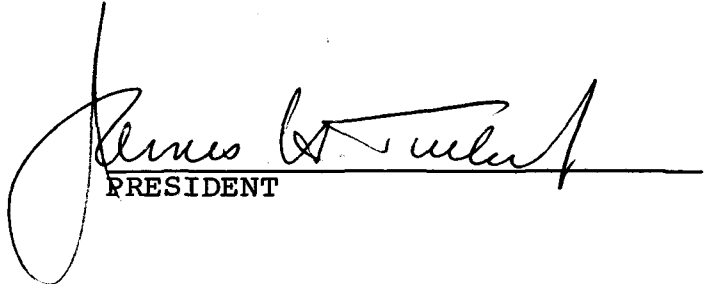
B. That the greens fees, swimming pool fees and driving range fees constituting dues are subject to New York State and local sales tax in accordance with the meaning and intent of section 1105(f)(2) of the Tax Law.

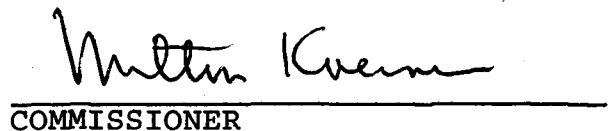
C. That applicant acted in good faith; therefore, the penalties and interest above the minimum statutory rate are cancelled.

D. That the application of Lafayette Country Club, Inc. is granted to the extent indicated in Conclusion of Law "C," above; that the Sales Tax Bureau is hereby directed to accordingly modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued September 19, 1974 and that, except as so granted, the application is in all other respects denied.

DATED: Albany, New York  
December 13, 1978

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER