

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
PIPING ROCK CLUB

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Sales and Use Taxes :
Taxes under Article(s) 28 & 29 of the :
Tax Law for the Year(s) or Period(s) :
March 1, 1969 through February 29, 1972

State of New York
County of Albany

John Huhn , being duly sworn, deposes and says that
*he is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 25th day of May , 1978 , *he served the within
Notice of Determination by (~~certified~~) mail upon Piping Rock Club
(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Piping rock Club
Piping Rock Rd.
Locust Valley, NY 11560
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~~
~~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

25th day of May , 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

May 25, 1978

Piping Rock Club
Piping Rock Rd.
Locust Valley, NY 11560

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 Charyvsky
Hearing Examiner

cc: ~~Petitioner's Representative~~
~~Richard J. [illegible]~~

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
PIPING ROCK CLUB	:	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 March 1, 1969 through	:	
February 29, 1972.	:	

Applicant, Piping Rock Club, Piping Rock Road, Locust Valley, New York 11560, 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 March 1, 1969 through February 29, 1972 (File No. 10263).

A small claims hearing was held before Raymond J. Siegel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 18, 1977 at 2:45 P.M. Applicant appeared by Roger Ross, Manager. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Samuel Freund, Esq., of counsel).

ISSUES

I. Whether fees paid by members of a country club for the use of athletic facilities by the members' guests were subject to sales tax.

II. Whether penalty and interest in excess of minimum interest imposed by the Sales Tax Bureau should be cancelled.

FINDINGS OF FACT

1. Applicant, Piping Rock Club, filed New York state and local sales and use tax returns for the period March 1, 1969 through February 29, 1972.
2. On April 16, 1973 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 \$5,175.15, plus penalty and interest, for the period March 1, 1969 through February 29, 1972.
3. Applicant, Piping Rock Club is organized under the New York Not-for-Profit Corporation Law. The applicant operates a country club and maintains a golf course, beach, tennis courts and clubhouse. The use of these facilities is restricted to members and their guests. Applicant's rules regarding the admission of "Occasional Guests" provided that "... no individual may be introduced as an occasional guest on more than one day in any calendar month...."
4. On audit, the Sales Tax Bureau's examiner determined that fees or charges for the use of the club's athletic facilities by members' guests which were billed to the club members constituted "dues" under section 1101(d)(6) of the Tax Law and were, therefore, subject to tax.
5. The applicant contended that of the \$98,720.65 assessed as additional dues, \$16,093.50 was actually paid by guests and not by members. The applicant offered no evidence to substantiate this contention.
6. Applicant acted in good faith at all times.

CONCLUSIONS OF LAW

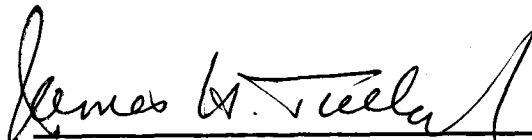
A. That the charges billed to a member for the use of athletic facilities by the member's guests constituted "dues" within the meaning and intent of section 1101(d)(6) of the Tax Law, prior to the amendment by Ch. 1004, Laws of 1973, effective September 1, 1973.

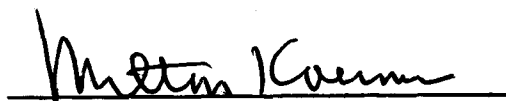
B. That dues paid to a social or athletic club are subject to New York state and local sales tax, in accordance with the meaning and intent of section 1105(f)(2) of the Tax Law.

C. That the application of Piping Rock Club is granted to the extent that the penalty, as well as the interest in excess of the minimum statutory rate, are cancelled; 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 April 16, 1973, and that, except as so granted, the application is in all other respects denied.

DATED: Albany, New York
May 25, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER