

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Buffalo Skating Club, Inc. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of
Sales & Use Tax :
under Article 28 & 29 of the Tax Law
for the Period 6/1/72-5/31/75. :

State of New York
County of Albany

Jay Vredenburg, 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 26th day of November, 1979, he served the within notice of Determination by mail upon Buffalo Skating Club, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Buffalo Skating Club, Inc.
Dann Memorial Rink, Amherst & Colvin
Buffalo, NY 14216
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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
26th day of November, 1979.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

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of
Buffalo Skating Club, Inc. :
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AFFIDAVIT OF MAILING

State of New York
County of Albany

Jay Vredenburg, 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 26th day of November, 1979, he served the within notice of Determination by mail upon Joseph M. Augustine the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Joseph M. Augustine
444 Statler-Hilton
Buffalo, NY 14202

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
26th day of November, 1979.

Joanne Knapp

J. Vredenburg

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

November 26, 1979

Buffalo Skating Club, Inc.
Dann Memorial Rink, Amherst & Colvin
Buffalo, NY 14216

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:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Joseph M. Augustine
444 Statler-Hilton
Buffalo, NY 14202
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
	:	
of	:	
	:	
BUFFALO SKATING 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, 1972 through May 31, 1975.	:	

Applicant, Buffalo Skating Club, Inc., Dann Memorial Rink, Amherst & Colvin, Buffalo, New York 14216, 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, 1972 through May 31, 1975 (File No. 16856).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, 65 Court Street, Buffalo, New York, on July 21, 1978 at 10:45 A.M. Applicant appeared by Joseph Augustine, Esq. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Paul Lefebvre, Esq., of counsel).

ISSUES

I. Whether the applicant is an educational organization exempt from tax under section 1116(a)(4) of the Tax Law.

II. Whether the applicant is an athletic club within the meaning and intent of section 1105(f)(2) of the Tax Law.

III. Whether the applicant, if an athletic club, is liable for sales tax on dues and initiation fees which was not collected from its members.

FINDINGS OF FACT

1. On June 21, 1976, the Sales Tax Bureau issued multiple notices and demand for payment of sales and use taxes due against applicant, Buffalo

Skating Club, Inc., (hereinafter referred to as "BSC") for the period June 1, 1972 through May 31, 1975 in the total amount of \$16,110.01, plus penalty and interest.

Said notices were issued as the result of BSC filing New York state and local sales and use tax returns as a group, in January 1976, with no remittance. The amount of tax reported on such returns is not at issue. The applicant was not registered with the Sales Tax Bureau.

2. BSC did not collect sales tax on its membership dues, initiation fees and lesson charges during the aforementioned periods. Sales tax was not collected because BSC was of the opinion that it was an educational organization exempt from tax.

On June 1, 1975, BSC started collecting and remitting tax when it received an outside legal opinion that its dues may be subject to tax.

3. BSC was incorporated in 1932 under the membership corporation laws of New York State. The membership of BSC was started by alumni from Nichols School, a private educational institution with Grades 5 through 12. In 1964, BSC moved its operations to a new skating arena built on the Nichols School campus. At this time, BSC amended its purpose as contained in the certificate of incorporation to read as follows:

This corporation is organized for the moral and mental improvement of men, women and children through affording inhabitants of the City of Buffalo and Western New York an opportunity to improve their physical fitness and to strive for personal excellence in the utilization of their talents and skills by advancing and encouraging the study of and participation in ice figure skating; establishing and implementing programs of instruction in the art, skills, disciplines, techniques and science of ice figure skating; through fostering interest and appreciation of and developing talents and skills for promotion, production and management and furthering desirable attitudes regarding cooperative endeavors by producing an ice review without pecuniary profit to any member, officer, or director, embracing participation of the members in planning, material selection, casting set design and construction, choreography, lighting and costuming; through discovering and affording gifted individuals an opportunity to develop their exceptional talents by encouraging interest and

providing guidance and coaching in those qualities and techniques suitable to, and requisite for, participation in local, regional, national and olympic competition, and also by sponsoring, organizing and hosting local and regional figure skating competitions participated in by the members without pecuniary profit to any member, officer, or director, all with a view to developing qualified olympic participants who will successfully and worthily represent the United States; and to do all things necessary and proper for the moral and mental improvement of men, women and children through the above.

4. BSC and Nichols School shared the use of the skating arena. Nichols School, as part of its curriculum, offered elective courses in ice figure skating and had exclusive use of the arena during school hours. The arena was restricted to BSC members during evening hours. Pursuant to an oral agreement with Nichols School, BSC was required to pay to Nichols School 75 percent of the annual operating expenses incurred. In addition, if BSC membership dues and initiation fees exceeded their pro rata share of expenses, the excess was to be paid towards Nichols School's indebtedness on the real property; however, BSC has no equity in the real property.

5. The annual dues structure of BSC is as follows:

Family	\$330
Married Couples	225
Single	180
Guardian	225
Clergy	75
Faculty	75

There is also an initiation fee of \$180 for family and married couples and \$130 for a single membership.

Membership in the BSC is open to the public. Nichols School students must be a BSC member in order to use the facilities during the times designated to BSC.

6. Instruction in the art of figure skating is not provided as part of the membership dues. Lessons are available to members for an additional fee. Instruction is given by teaching professionals hired by BSC. Lesson fees are

billed monthly to members by BSC who in turn pays such receipts to the professional. The professional instructor receives no other compensation from BSC.

7. BSC had times scheduled for members to participate in certain aspects of figure skating, such as dance or spins. However, the facilities were not closed to those members not participating in the scheduled activity.

8. Neither the Board of Directors nor the officers of BSC received any compensation for their services.

9. Instruction in the art of figure skating is limited to BSC members.

10. Reasonable cause existed for BSC's failure to collect sales tax from its members.

CONCLUSIONS OF LAW

A. That section 1116(a)(4) of the Tax Law provides for the exemption from sales and use taxes,

Any corporation...organized and operated exclusively for religious, charitable...or educational purposes...no part of the net earnings of which ensures 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...any political campaign on behalf of any candidate for public office.

B. That applicant is not organized or operated exclusively for educational or any of the exempt purposes set forth in section 1116(a)(4) of the Tax Law; therefore, applicant is not an organization exempt from the imposition of sales and use taxes.

C. That applicant is an athletic club within the meaning and intent of section 1105(f)(2) of the Tax Law, and as such, its membership dues and initiation fees are subject to tax. That fees for lessons billed by applicant to members constitutes additional dues and are therefore, subject to tax pursuant to section 1105(f)(2) of the Tax Law.

D. That applicant is liable for sales taxes where it has failed to

collect the same from members, pursuant to section 1133(a) of the Tax Law.

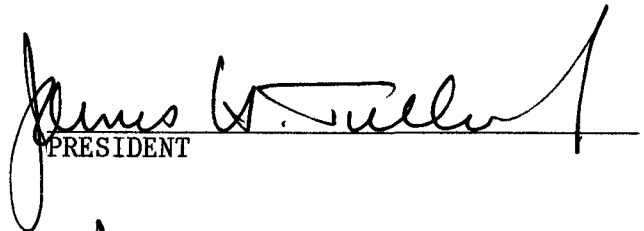
E. That interest in excess of the minimum statutory rate and the penalty imposed pursuant to section 1145(a) of the Tax Law are cancelled.

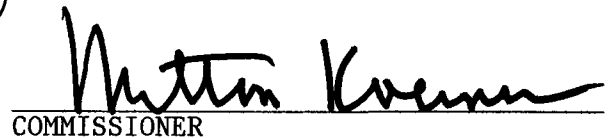
F. That the application of Buffalo Skating Club, Inc. is granted to the extent indicated in Conclusion of Law "F", and that except as so granted, the application is in all other respects denied.

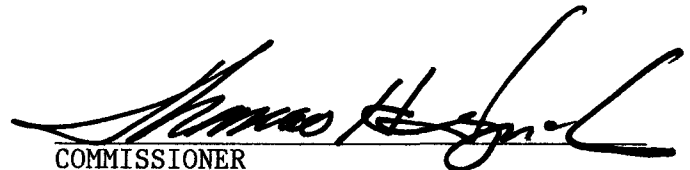
DATED: Albany, New York

NOV 26 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER