

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

DENNIS LAND DEVELOPMENT CO., INC.

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)
June 1, 1972 through May 31, 1975

AFFIDAVIT OF MAILING

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 15th day of March, 1979, she served the within
Notice of Determination by (~~certified~~) mail upon Dennis Land Development
Co., Inc. (~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Dennis Land Development Co., Inc.
P.O. Box 344
Saratoga Springs, New York 12866

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

15th day of March, 1979.

Marilyn J. Paparone

John Huhn

STATE, OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

DENNIS LAND DEVELOPMENT CO., 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)~~ Period(s) :
June 1, 1972 through May 31, 1975

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 15th day of March , 1979, he served the within
Notice of Determination by (~~certified~~) mail upon John H. Dennis, Esq.

(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: John H. Dennis, Esq.
P.O. Box 7265 Capitol Station
Albany, New York 12224

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

15th day of March , 1979

Marilyn J. Papineau

John Huhn



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

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

March 15, 1979

Dennis Land Development Co., Inc.
P.O. Box 344
Saratoga Springs, NY 12866

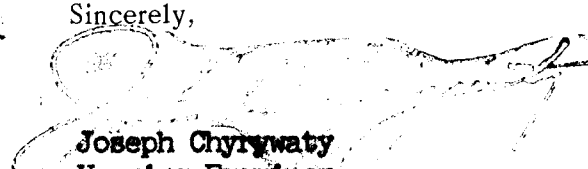
Gentlemen:

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 Chyrgwaty
Hearing Examiner

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
DENNIS LAND DEVELOPMENT CO., 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, Dennis Land Development Co., Inc., P.O. Box 344, Saratoga Springs, New York 12866, 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. 12950).

A small claims hearing was held before Frank Landers, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on February 8, 1978 at 2:00 P.M. Applicant appeared by John H. Dennis, Esq. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Francis Cosgrove, Esq., of counsel).

ISSUE

I. Whether applicant is liable for New York State sales and use taxes on the purchase of materials and supplies used in its country club operations.

FINDINGS OF FACT

1. On December 16, 1975 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 \$5,429.05, plus penalty and interest, for the period June 1, 1972 through May 31, 1975.

2. During the period at issue, applicant, Dennis Land Development Co., was engaged in the construction of new homes within or surrounding the McGregor Country Club located on Northern Pines Road, Saratoga Springs, New York. Applicant was also the sole owner and operator of the McGregor Country Club.

3. The McGregor Country Club features a club house with a dining room and bar, a snack bar, an 18-hole golf course, a swimming pool and tennis courts. An individual or "member" may also rent golf carts and lockers. In exchange for the payment of a fee or charge, an individual or "member" may use the above facilities, usually on a seasonal basis. The fee or charge is determined by the facilities desired.

4. On audit, the Sales Tax Bureau found that applicant failed to pay sales or use tax on the purchase of materials used for the construction of new homes. Applicant did not contest this portion of the assessment.

5. The Bureau also found that applicant failed to pay sales or use tax on the purchases of equipment and supplies used in its country club operations. Said purchases included a watering system, lawn mowers, water heaters, grass seed and fertilizers, gas and fuel and miscellaneous supplies.

6. Applicant contended that the above items were purchased for resale and that the charges or fees paid by the individuals or "members" was payment for a license to use said items. Applicant collected sales tax on the payments made by "members."

CONCLUSIONS OF LAW

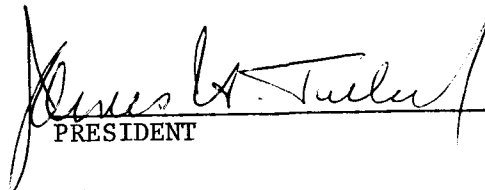
A. That the watering system, lawn mowers, water heaters, grass seed and fertilizers, gas and fuel and miscellaneous supplies were not purchased for resale within the meaning and intent of section 1101(b)(4)(i) of the Tax Law; therefore, the purchase thereof by applicant was not exempt from sales or use tax. Said subsection provides, in pertinent part, that the term "retail sale" means the sale of tangible personal property for any purchase other than "... (A) for resale as such or as a physical component part of tangible personal property" Applicant did not sell the above items "as such", but used said items in its country club operations. No separate fee or charge was made to the "members" for said items.

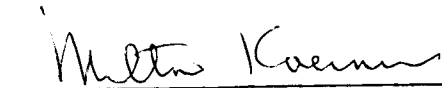
B. That the application of Dennis Land Development Co., Inc. is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued December 16, 1975 is sustained.

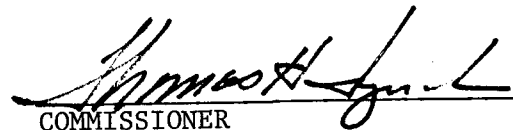
DATED: Albany, New York

March 15, 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER