

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Port Jervis Country 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 3/1/72 - 2/28/75. :

State of New York  
County of Albany

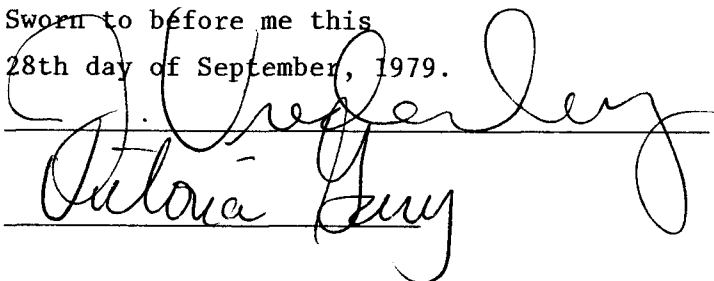
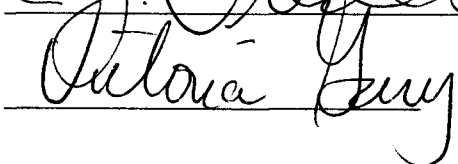
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 28th day of September, 1979, he served the within notice of Determination by mail upon Port Jervis Country Club, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Port Jervis Country Club, Inc.  
Neversink Rd.  
Port Jervis, NY 12771

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  
28th day of September, 1979.

STATE OF NEW YORK  
STATE TAX COMMISSION

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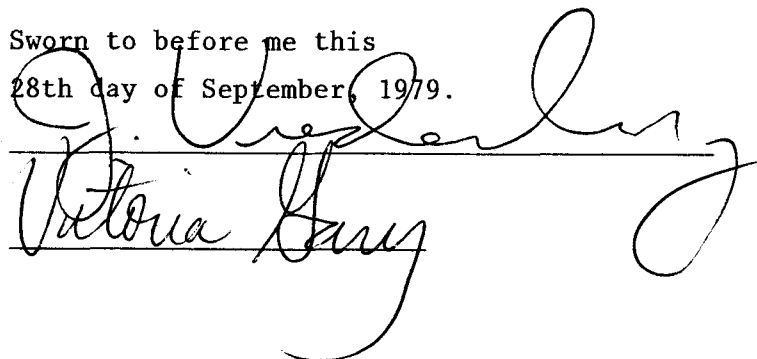
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 28th day of September, 1979, he served the within notice of Determination by mail upon William D. Bavoso the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. William D. Bavoso  
Cohen, Bavoso, Weinstein & Fox  
24 Front St.  
Port Jervis, NY 12771

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  
28th day of September, 1979.

  
Victoria Gary

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

JOHN J. SOLLECITO  
DIRECTOR

Telephone: (518) 457-1723

September 28, 1979

Port Jervis Country Club, Inc.  
Neversink Rd.  
RD 2, PO Box 103  
Port Jervis, NY 12771

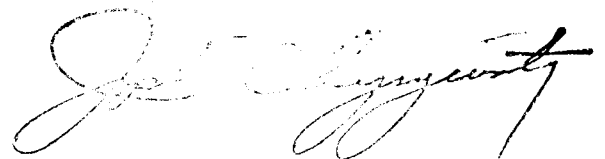
Gentlemen:

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,



cc: Petitioner's Representative  
William D. Bavoso  
Cohen, Bavoso, Weinstein & Fox  
24 Front St.  
Port Jervis, NY 12771  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Application	:	
	:	
of	:	
	:	
PORT JERVIS 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 March 1, 1972 through	:	
February 28, 1975.	:	

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Applicant, Port Jervis Country Club, Inc., Neversink Road, R.D. #2, P.O. Box 103, Port Jervis, New York 12771, 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, 1972 through February 28, 1975 (File No.11218).

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 June 19, 1978. Applicant appeared by William D. Bavoso, Esq. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Aliza Schwadron, Esq., of counsel).

ISSUES

I. Whether receipts from the issuance of certificates of membership to applicant's members are subject to sales tax under section 1105(f)(2) of the Tax Law.

II. Whether receipts from the issuance of capital improvement assessment certificates to applicant's members are subject to sales tax under section 1105(f)(2) of the Tax Law.

FINDINGS OF FACT

1. Applicant, Port Jervis Country Club, Inc., filed New York state and local sales and use tax returns for the period March 1, 1972 through February 28, 1975.

2. On April 22, 1975, applicant executed a Consent Extending Period of Limitation for Assessment of Sales and Use Taxes for the period March 1, 1972 through February 28, 1975, to and including March 20, 1976.

3. On September 26, 1975, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against Port Jervis Country Club, Inc., assessing a tax due of \$6,168.43, plus penalty and interest of \$2,087.66, for a total of \$8,256.08.

4. Said Notice resulted from an audit of applicant's books and records and was revised at a pre-hearing conference, to reflect a tax due of \$4,844.88. Applicant paid \$2,310.24, but protested the balance which amounted to \$2,534.64. Said balance represented the tax which the Sales Tax Bureau computed to be due on amounts paid by members for certificates of membership and for capital improvement assessment certificates.

5. Applicant operated a country club which had a golf course and swimming pool. Its clubhouse was destroyed by a fire in June of 1973. As a result, a rebuilding program was instituted and capital improvement assessment certificates were issued. A request was made of the members to purchase a certificate, and each member voluntarily complied. Rates which were posted after the fire for certificate membership were as follows:

Initiation Fee	\$200.00
Annual Dues	200.00
Membership Certificate	200.00
Capital Improvement Assessment Certificate	300.00

6. Applicant's charter provided for 200 certificate members and 50 associate members. Certificate members enjoyed all rights and privileges, including voting rights. Associate members enjoyed the same rights and privileges as certificate members, but had no voting rights.

7. Applicant received payment for certificates of membership and for capital improvement assessment certificates from members only. It would pay back the

amount stated on each certificate (\$200 for membership, \$300 for capital improvement assessment), without interest and less any indebtedness which the member owed to the club, when a member terminated his membership and surrendered the certificates.

CONCLUSIONS OF LAW

A. That the receipts from certificates of membership must be considered an "initiation fee" under section 1101(d)(7) of the Tax Law as "[a]ny...loan...required as a condition precedent to membership...", and that the receipts from capital improvement assessment certificates must be considered "dues" under section 1101(d)(6) as "...including any assessment, irrespective of the purpose for which made...". Accordingly, receipts for certificates of membership and capital improvement assessment certificates are subject to tax, pursuant to section 1105(f)(2) of the Tax Law.

B. That the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued on September 26, 1975, and adjusted per Finding of Fact "4", is sustained.

C. That applicant, Port Jervis Country Club, Inc., acted in good faith; therefore, the penalties are cancelled. The Sales Tax Bureau is hereby directed to modify the aforementioned adjusted Notice issued on September 26, 1975, but that, except as so granted, the application is in all other respects denied.

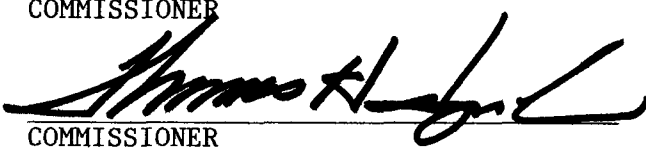
DATED: Albany, New York

SEP 28 1979

STATE TAX COMMISSION

  
RESIDENT

  
COMMISSIONER

  
COMMISSIONER