STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Glen Oaks 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 9/1/73-11/30/73. :

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 18th day of July, 1980, he served the within notice of Decision by mail upon Glen Oaks Club, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Glen Oaks Club, Inc.
175 Post Rd., P.O. Box 249
Old Westbury, NY 11568

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
18th day of July, 1980.

Deborah A Bank

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Glen Oaks Club, Inc. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
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Sales & Use Tax :
under Article 28 & 29 of the Tax Law
for the Period 9/1/73-11/30/73. :

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 18th day of July, 1980, he served the within notice of Decision by mail upon Gordon D. Simonds 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. Gordon D. Simonds
Schwaeber, Sloane, Weitzman & Co.
107 Northern Blvd.
Great Neck, NY 11021

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
18th day of July, 1980.

Sarah A. Bank

J. Vredenburg

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

July 18, 1980

Glen Oaks Club, Inc.
175 Post Rd., P.O. Box 249
Old Westbury, NY 11568

Gentlemen:

Please take notice of the Decision 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
Gordon D. Simonds
Schwaeber, Sloane, Weitzman & Co.
107 Northern Blvd.
Great Neck, NY 11021
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
GLEN OAKS CLUB, INC.	:	DECISION
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 September 1, 1973 through November 30, 1973.	:	

Petitioner, Glen Oaks Club, Inc., 175 Post Road, P.O. Box 249, Old Westbury, New York 11568, 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 September 1, 1973 through November 30, 1973 (File No. 15345).

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 September 26, 1978 and continued on January 10, 1979. Petitioner appeared by Gordon D. Simonds, CPA. The Audit Division appeared by Peter Crotty, Esq. (Frank Levitt, Esq., of counsel).

ISSUES

I. Whether petitioner is entitled to a credit for that portion of the sales tax it paid pursuant to an increase in the Nassau County sales tax rate.

II. Whether petitioner timely amended its original application for credit to include that portion of the sales tax paid pursuant to an increase in the New York State sales tax rate.

FINDINGS OF FACT

1. Petitioner, Glen Oaks Club, Inc. (hereinafter Glen Oaks) filed a New York State and Local Sales and Use Tax Return for the period September 1, 1973 through November 30, 1973. On this return it claimed a credit of $7,120.74. This credit was claimed on the grounds that petitioner paid 4 percent State and 3 percent Nassau County sales taxes on purchases of tangible property when only 4 percent State and 2 percent Nassau County tax was due.

2. On June 10, 1975, the Sales Tax Bureau denied petitioner's claim for credit on the grounds that the conditions for taxing sales at previous rates pursuant to section 1106(a) of the Tax Law were not met.

3. On August 20, 1969, petitioner, Glen Oaks, entered into an agreement with Burge-Donghia, Inc. (hereinafter Burge). Pursuant to this agreement, Burge was to supply petitioner with certain decorating services and a proposal to furnish petitioner's to be constructed clubhouse building. The agreement provided that each item of merchandise supplied by Burge was to be specified in a purchase order and submitted to petitioner for approval. Upon petitioner's approval together with a deposit equal to 50 percent of the purchase price, Burge would order the specified furnishings from its supplier or manufacturer. The agreement also required Burge to deliver the merchandise within six months of the approval unless a different time was set forth on the purchase order. If the clubhouse was still under construction, the merchandise was to be delivered to a warehouse designated by petitioner. Upon delivery of the merchandise to Glen Oaks, Burge was to invoice applicant for the purchase price (less the deposit), the New York State sales tax, and delivery charges. Petitioner was to pay Burge within ten days of the invoice date subject to some contingencies.

[illegible] OF ACT

[illegible]

[illegible]

4. During the months of July and August of 1970, petitioner approved purchase orders prepared by Burge under which it ordered floor coverings, furniture, fixtures and decorations valued at approximately $750,000.00. During the period from December 1, 1969 through June 23, 1971, petitioner remitted approximately $347,540.00 to Burge, pursuant to its contractual obligation which required a 50 percent deposit of the purchase price for the furnishings.

5. The floor coverings, furniture, fixtures and decorations ordered by petitioner were delivered and invoiced from Burge to petitioner during May, June and July of 1972. The invoices set forth the amount of the furnishings, the sales tax (at the rate of 7 percent) less the deposit. Petitioner was also billed for delivery and freight charges. Petitioner did not produce evidence to show that it was billed for storage charges.

6. At the hearing, petitioner made a motion to amend its application for refund on the grounds that it complied with the transitional provisions under section 1106(a) of the Tax Law and therefore, should have paid sales tax on purchases of furnishings from Burge at the rate of 5 percent (3 percent New York State, 2 percent Nassau County) rather than the 7 percent rate (4 percent New York State, 3 percent Nassau County) it was billed.

7. Petitioner argued that it met the three conditions (pursuant to section 1106(a) of the Tax Law) to permit the sales of furnishings from Burge to be taxed at the rate in effect at the time the agreement was entered into. It contended that:

> (a) The contract was entered into on August 20, 1969 which was four months prior to the effective dates of June 1, 1971 and March 1, 1972 for the increase in the New York State and Nassau County rates.

(b) The furnishings were segregated from inventory by Burge or its suppliers prior to November 1, 1971 since the materials were ordered for delivery by May, 1971. However, since its new facility was not completed in May, 1971, it was not possible to take delivery. Petitioner further argued that the materials purchased from Burge would have had to been segregated from inventory since the designer did not maintain a normal inventory. Additionally, it contended that if the materials were not received by Burge, but were retained by the manufacturer, they would have been segregated from the manufacturer's inventory because the materials consisted of custom made furniture.

(c) Approximately 50 percent of the total selling price was paid by petitioner prior to the effective date of the sales tax increase.

8. The New York State tax rate increased from 3 percent to 4 percent effective June 1, 1971. The Nassau County tax rate increased from 2 percent to 3 percent effective March 1, 1972.

CONCLUSIONS OF LAW

A. That petitioner has failed to produce documentary or other substantial evidence to show that furnishings purchased pursuant to its agreement were segregated (four months prior to the effective dates or either the New York State or Nassau County sales tax rate increases) from any other similar property in the possession of the vendor and identified as having been appropriated to such sale or agreement of sale. Moreover, petitioner has not shown whether such furnishing were even received by Burge (its supplier) or for that matter whether the furnishings were completed by the manufacturer four months prior to the sales tax increase. That the transactions for the purchase of the furnishings by petitioner do not meet the transitional provisions within the meaning and intent of section 1106(a) of the Tax Law. Accordingly, petitioner properly paid sales tax at the rate of 7 percent on its purchases of certain furnishings from Burge.

[illegible]

B. That the issue as to whether petitioner timely amended its application is moot, under the presumption that even if such application was timely, the transactions did not fall within the meaning and intent of section 1106(a) of the Tax Law and therefore the application is denied.

C. That the application of Glen Oaks Club, Inc. is denied and the denial of refund issued by the Audit Division on June 10, 1975 is sustained.

DATED: Albany, New York
JUL 1 8 1980

STATE TAX COMMISSION

PRESIDENT

COMMISSIONER

COMMISSIONER

JUL 18 1980