

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
N. R. C. Realty Corp. :

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 3/1/75-2/28/78. :

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 November, 1980, he served the within notice of Decision by mail upon N. R. C. Realty Corp., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

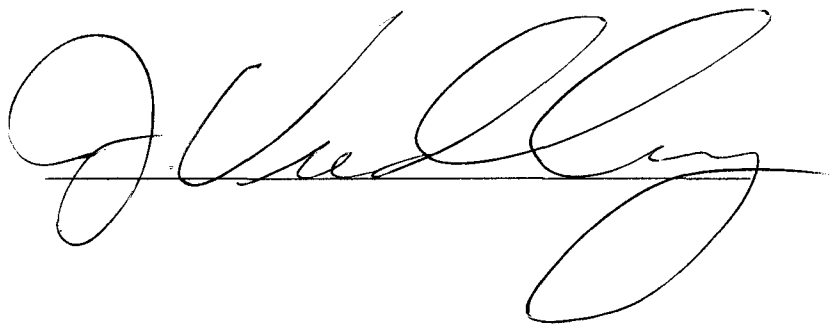
N. R. C. Realty Corp.
Rte. 9, P.O. Box 57
North Redoubt Club
Garrison, NY 10524

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 November, 1980.

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STATE TAX COMMISSION

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for the Period 3/1/75-2/28/78. :

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 November, 1980, he served the within notice of Decision by mail upon Hyman Weinstein the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

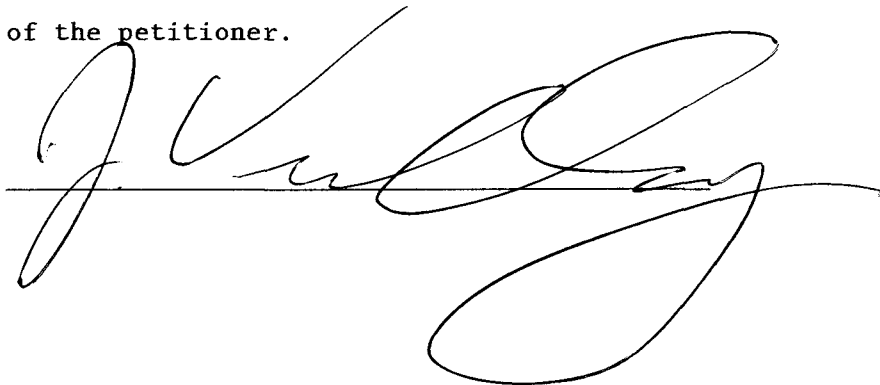
Mr. Hyman Weinstein
56-52 219th St.
Bayside, NY 11364

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 November, 1980.





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

November 28, 1980

N. R. C. Realty Corp.
Rte. 9, P.O. Box 57
North Redoubt Club
Garrison, NY 10524

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
Hyman Weinstein
56-52 219th St.
Bayside, NY 11364
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

| | | |
|---|---|----------|
| In the Matter of the Petition | : | |
| of | : | |
| N.R.C. REALTY CORPORATION | : | 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 March 1, 1975 | : | |
| through February 28, 1978. | : | |

Petitioner, N.R.C. Realty Corporation, P.O. Box 57, Route 9, North Redoubt Club, Garrison, New York 10524, filed a petition 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, 1975 through February 28, 1978 (File No. 25650).

A small claims hearing was held before Judy M. Clark, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 19, 1980 at 2:45 P.M. Petitioner appeared by Hyman Weinstein, PA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether seasonal charges made by petitioner are taxable under section 1105(f)(2) of the Tax Law as dues or within the exception of section 1105(f)(1) as admissions to or use of facilities for participating sporting activities.

FINDINGS OF FACT

1. On November 20, 1978, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against N.R.C. Realty Corporation for the period March 1, 1975 through February 28, 1978 in the amount of \$8,305.98 tax plus simple interest as a result of a field audit.

2. Petitioner executed a consent extending the period of limitation for assessment to March 20, 1979.

3. Petitioner, N.R.C. Realty Corporation, operated facilities known as Garrison Golf Club. Facilities available included a golf course, tennis courts, swimming pool and lockers. A restaurant, bar and pro shop were also available on the premises. Season passes for the use of the facilities were available to anyone who wished to purchase same without any discrimination. Categories of passes available ranged from single memberships for tennis only at a seasonal charge of \$150.00 to golf and tennis family memberships at a seasonal charge of \$2,100.00.

Members were entitled to use the facilities anytime during the season. Non-members were charged at a daily rate according to the use of the facility. The facilities were open to anyone wishing to use them.

4. It was the Audit Division's position that the seasonal charges made by petitioner were membership dues and taxable under section 1105(f)(2) of the Tax Law. The Audit Division also assessed tax of \$258.72 on expense purchases and unreported sales tax of \$140.48; however, these items are not at issue.

5. Petitioner contended that the seasonal charges made to its members were no different from the daily charges made to anyone using the facilities and should be exempt as an admission for a participating sport. It contended that it was not operating as a private club, but was open to the general public.

6. Golf membership included green fees, carts, MGA dues, club storage, locker room facilities, swimming pool facilities and trophy fund. A golf tournament is held yearly which is open to both members and non-members. Tennis membership included swimming pool facilities, locker room facilities

and tennis court privileges 1 hour per weekend day and whenever available weekdays.

7. Terms and conditions of membership included that the Club/Management shall have the right at any time to revoke membership and withdraw any or all privileges for misuse, misconduct or non-payment of financial responsibilities. Statements submitted to members were to be paid in full within ten days of receipt.

CONCLUSIONS OF LAW

A. That pursuant to 20 NYCRR 527.11(b)(4) the term "club or organization" is defined as "any entity which is composed of persons associated for a common objective or common activities."

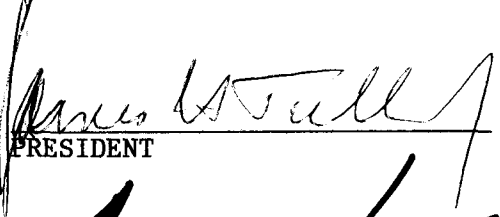
B. That N.R.C. Realty Corporation operating as Garrison Golf Course is an athletic club within the meaning of section 1101(d)(13) of the Tax Law and 20 NYCRR 527.11(b)(6). That the seasonal charges made to its members for sports privileges or activities constitute dues within the meaning of section 1101(d)(6) and 20 NYCRR 527.11(b)(2). That the seasonal charges made by petitioner to its members are taxable under section 1105(f)(2) of the Tax Law.

C. That the petition of N.R.C. Realty Corporation is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued November 20, 1978 is sustained.

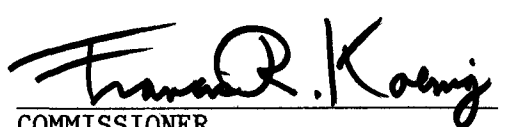
DATED: Albany, New York

NOV 28 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER