

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Silver Gull Club, Inc. :  
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 12/1/71 - 11/30/74. :

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 25th day of January, 1980, he served the within notice of Determination by mail upon Silver Gull Club, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Silver Gull Club, Inc.  
Beach 193rd St. P.O. Box 277  
Rockaway Point, NY 11695

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  
25th day of January, 1980.

Joanne Knapp

J. J. Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Silver Gull 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 12/1/71 - 11/30/74. :

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 25th day of January, 1980, he served the within notice of Determination by mail upon Kathleen M. Kundar the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Ms. Kathleen M. Kundar  
Fox, Glynn & Melamend, Esqs.  
299 Park Ave.  
New York, NY

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  
25th day of January, 1980.

Joanne Knapp

J. J. Vredenburg

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

January 25, 1980

Silver Gull Club, Inc.  
Beach 193rd St. P.O. Box 277  
Rockaway Point, NY 11695

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  
Kathleen M. Kunder  
Fox, Glynn & Melamend, Esqs.  
299 Park Ave.  
New York, NY  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Application	:	
of	:	
SILVER GULL 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 December 1, 1971 through	:	
November 30, 1974.	:	

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Applicant, Silver Gull Club, Inc., Beach 193rd Street, P.O. Box 277, Rockaway Point, New York 11695, 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 December 1, 1971 through November 30, 1974 (File No. 10615).

A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 20, 1978 at 10:45 A.M. Applicant appeared by its Secretary-Treasurer, Thomas P. August, and its Comptroller, Harvey Good, and by Kathleen M. Kunder, Esq. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUE

Whether monies paid by members of a beach club, which is a not-for-profit corporation, for use of cabanas on a seasonal basis of more than 90 days, are subject to the sales tax under section 1105(f)(2) of the Tax Law.

FINDINGS OF FACT

1. On October 8, 1975, a Notice of Determination and Demand for Payment of Sales and Use Taxes Due was issued by the Sales Tax Bureau. The Bureau charged applicant with a sales and use tax deficiency for the period December 1, 1971 through November 30, 1974 of \$80,533.20, plus penalty and interest of \$32,123.90, for a total allegedly due of \$112,756.10.
2. Applicant timely filed an application for a hearing to review the determination on December 18, 1975.
3. Applicant had duly filed New York State and local sales and use tax returns (Form ST-100) for the period under review, indicating that while sales and use taxes had been charged and paid over on the rental of lockers and on club dues, no sales taxes had been paid on monies received from club members for the use of cabanas.
4. Applicant is a beach club located in Rockaway, New York and is organized as a not-for-profit corporation, operating for members only on a seasonal basis. The season officially ran from the Friday before Memorial Day (on May 30th), to the first Monday in September of each year. Actually, the club facilities were available to members until late October. Members had access to the beach, a swimming pool, basketball, handball and tennis courts, a cafeteria and restaurant, lockers and cabanas.
5. Applicant offers (to members only) the use of cabanas on a seasonal basis from May through September. Each cabana is leased to a club member on an optional basis, and the lease gives that member exclusive use of the designated cabana for the entire season. There are 456 cabanas, all of which are of permanent sheetrock and metal construction with separate rooms, including a kitchen, bath and sleeping facilities. The typical cabana is 8' x 16' with a

porch in front. The decks on which they are constructed are anchored to the beach by creosoted pilings which are sunk 25' to 30' into the sand. These are secured by cross ties (2x10's and 2x14's), and then decking is placed on top. The present pilings, decks and cabanas (with additions) have been in place since 1963.

The cabana lessees decorate them individually, add refrigerators, furniture and fixtures to their individual tastes. They use their own locks and the beach club has access to them only for repairs.

6. The application for seasonal membership is in two parts. The first covers membership, on which applicant indicates whether he wishes in addition, a cabana, cabanette or bath cabin. If he so chooses, then a separate fee for the use of the facility is charged the member. No sales tax was charged or collected on the rent for this accommodation.

7. Applicant had reasonable grounds for believing that the rental of cabanas was not subject to sales and use taxes during the period in question.

CONCLUSIONS OF LAW

A. That the monies paid applicant, Silver Gull Club, Inc., by its members for the seasonal use of cabanas are not taxable dues under section 1105(f)(2) of the Tax Law. That instead, the receipts are for the rental of real property which is not subject to sales tax (Breezy Point Surf Club, Inc. et al. v. State Tax Commission, 67 AD 2d 760, \_\_\_ NY 2d \_\_\_).

B. That the application of Silver Gull Club, Inc. is granted and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued October 8, 1975 is cancelled.

DATED: Albany, New York

JAN 25 1980

STATE TAX COMMISSION

PRESIDENT

COMMISSIONER

COMMISSIONER