

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Surface Line Operators Fraternal Organ. 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 18th day of January, 1980, he served the within notice of Determination by mail upon Surface Line Operators Fraternal Organ. Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Surface Line Operators Fraternal Organ. Inc.

436 Willoughby Ave.

Brooklyn, NY 11205

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 January, 1980.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of

Surface Line Operators Fraternal Organ. Inc. :

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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 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 18th day of January, 1980, he served the within notice of Determination by mail upon James H. De Graffenreidt 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. James H. De Graffenreidt
Chamber of Comm. Bldg., 89-31 161st St., Suite 605
Jamaica, NY 11432

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 January, 1980.

Joanne Knapp

J. Vredenburg

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

January 18, 1980

Surface Line Operators Fraternal Organ. Inc.
436 Willoughby Ave.
Brooklyn, NY 11205

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
James H. De Graffenreidt
Chamber of Comm. Bldg., 89-31 161st St., Suite 605
Jamaica, NY 11432
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
SURFACE LINE OPERATORS FRATERNAL	:	
ORGANIZATION, 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.	:	

Applicant, Surface Line Operators Fraternal Organization, Inc.
436 Willoughby Avenue, Brooklyn, New York 11205, 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. 10409).

A small claims hearing was held before Raymond J. Siegel, Hearing Officer,
at the offices of the State Tax Commission, 141 Livingston Street, Brooklyn,
New York, on July 18, 1978 at 9:15 A.M. Applicant appeared by James H.
DeGraffenreidt, PA. The Sales Tax Bureau appeared by Peter Crotty, Esq.
(Aliza Schwadron, Esq., of counsel).

ISSUES

I. Whether applicant, Surface Line Operators Fraternal Organization,
Inc., qualifies as an exempt organization under section 1116(a) of the Tax
Law.

II. Whether the applicant, if not an exempt organization, is a fraternal
organization whose dues are exempt from sales tax.

III. Whether the results of the audit of applicant's books and records by
the Sales Tax Bureau properly reflect the applicant's tax liability for the
period March 1, 1972 through February 28, 1975.

FINDINGS OF FACT

1. Applicant timely filed New York State and local sales and use tax returns for the period March 1, 1972 through February 28, 1975.

2. A timely filed Consent Extending Period of Limitation for Assessment of Sales and Use Taxes under Articles 28 and 29 of the Tax Law had been executed by the applicant covering the period March 1, 1972 through February 28, 1975. The consent extended the period to June 20, 1976.

3. On November 14, 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 \$7,971.92, plus penalty and interest, for the period March 1, 1972 through February 28, 1975.

4. On December 14, 1976, the Audit Division issued a second Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant for additional taxes due of \$3,734.04, plus penalty and interest, for the period September 1, 1973 through February 28, 1975. This resulted from the discovery, by the Sales Tax Bureau, of a mathematical error wherein audited additional taxable sales had been understated by \$100,000.00. The original assessment, issued November 14, 1975, erroneously allocated \$102,347.17 instead of \$202,347.17 in additional taxable sales over the audit period March 1, 1972 through February 28, 1975. The statute of limitations had expired for the period March 1, 1972 through August 31, 1973 at the time the supplemental notice was issued.

5. Applicant is a Membership Corporation organized under the New York Membership Corporations Law, section 10, and operated at 436-38 Willoughby Avenue, Brooklyn, New York. It is an entity unto itself with no branches or parent organization. According to its constitution and by-laws:

- (a) the membership is restricted to "All Surface Line Operators, Motormen, Conductors, and M.A.B.S.T.O.A. Operators presently employed

by the New York City Transit Authority...;"

b) the "object" of the organization is, in part,

(1) To promote fellowship and extend acquaintances by means of social gatherings. To promote social intercourse among the members by means of dinners, musicals, church rallies and other kindred forms of entertainment,

(2) To render aids and assistance in worthy charitable movements of any Organization here in the City of New York, and to further provide aid and assistance to members who the membership deems deserving.

6. The field audit of the applicant's books and records revealed the following:

(a) Applicant's income was derived from membership dues (\$36.00 per member, per annum), sales of liquor and beer from a bar and lounge maintained for the benefit of members and guests, a banquet hall which is rented out to members and the public, coat checking, and special events.

(b) An analysis of applicant's liquor and beer purchases for the test month of October 1974, when compared with corresponding selling prices supplied by the bartender, revealed liquor and beer markups of 174.2 percent and 128.7 percent, respectively. The auditor obtained from the bar a shot glass with a capacity of one and three-eighths ounces (1-3/8 ounces) and allowed a 15 percent spillage factor in the liquor markup test. Beer was sold by the bottle. No spillage factor was allowed on the beer markup test.

(c) Before applying the respective markups to liquor and beer purchases, the Sales Tax Bureau allowed 5 percent (\$4,230.77) against said purchases for free drinks given to officers of the organization.

(d) Application of the said markups resulted in audited liquor and beer sales of \$213,240.05, plus other receipts per books and records of \$128,037.13, resulting in audited taxable sales of \$341,277.18. Credit was given for reported taxable sales of \$138,930.01 to arrive at additional taxable sales of \$102,347.17 (the additional taxable sales were actually \$202,347.17; the additional \$100,000.00 was the basis of the supplemental notice issued December 14, 1976).

7. The applicant's activities mainly consisted of the holding of dinners, dances and other special events for members and their guests.

8. Applicant contended that at the time it was incorporated in 1958, the nature and purposes of the organization were fraternal; that in 1965 the purposes and nature of the organization changed to charitable; and that it qualifies as a tax-exempt organization because of its having been a section 10 corporation under the New York State Membership Corporation Law prior to the effective date of the Not-for-Profit Corporation Law, September 1, 1970.

9. Applicant acted in good faith and there was no intent to evade the sales tax.

CONCLUSIONS OF LAW

A. That applicant, Surface Line Operators Fraternal Organization, Inc., did not sustain the burden of proof that it is a corporation organized and operated exclusively for charitable purposes; that accordingly it is not an organization exempt from sales tax according to the meaning and intent of section 1116(a) (4) of the Tax Law.

B. That applicant is not a fraternal society, order or association operating under the lodge system; but rather applicant is a social club wherein its membership dues are subject to tax according to the meaning and intent of section 1105(f) (2) of the Tax Law.

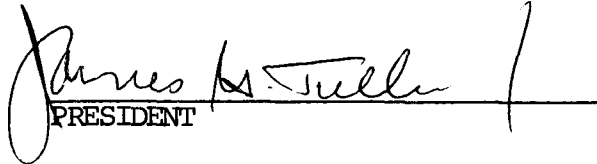
C. That the audit performed by the Audit Division and the resultant tax due was arrived at based on established audit procedures and was, therefore, properly determined in accordance with section 1138(a) of the Tax Law.

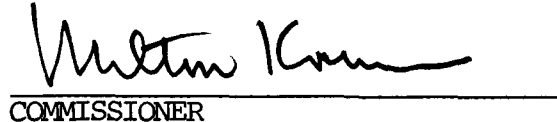
D. That the application of Surface Line Operators Fraternal Organization, Inc. is granted to the extent of cancelling the penalties and the interest in excess of the minimum statutory rate; that the Audit Division is hereby directed to modify accordingly the notices of determination and demand for payment of sales and use taxes due issued November 14, 1975 and December 14, 1976; and that, except as so granted, the application is in all other respects denied.

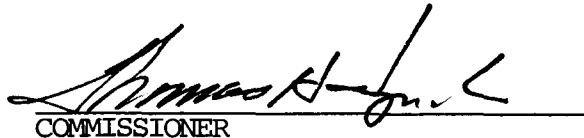
DATED: Albany, New York

STATE TAX COMMISSION

JAN 18 1980


PRESIDENT


COMMISSIONER


COMMISSIONER