

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Syrang Aero 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 9/1/74. :

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 17th day of October, 1980, he served the within notice of Decision by mail upon Syrang Aero Club, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Syrang Aero Club, Inc.
174 Air National Guard
Syracuse, NY 13160

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
17th day of October, 1980.

Deborah A. Bank

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

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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 17th day of October, 1980, he served the within notice of Decision by mail upon John M. Lischak the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

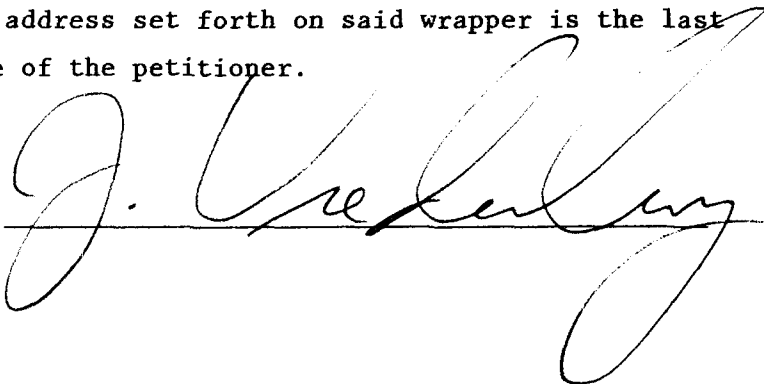
Mr. John M. Lischak
1900 W. Genesee St.
Syracuse, NY 13204

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
17th day of October, 1980.





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

October 17, 1980

Syrang Aero Club, Inc.
174 Air National Guard
Syracuse, NY 13160

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
John M. Lischak
1900 W. Genesee St.
Syracuse, NY 13204
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
SYRANG AERO 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, 1974.	:	

Petitioner, Syrang Aero Club, Inc., 174 Air National Guard, Syracuse, New York 13160, 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 September 1, 1974 (File No. 00479).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, 333 East Washington Street, Syracuse, New York, on May 14, 1980 at 9:15 A.M. Petitioner appeared by John M. Lischak, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Paul Lefebvre, Esq., of counsel).

ISSUES

I. Whether petitioner is an educational organization exempt from sales and use taxes under section 1116(a)(4) of the Tax Law.

II. Whether petitioner is an instrumentality of the State of New York or the United States of America and thereby exempt from sales and use taxes under section 1116(a)(1) or 1116(a)(2) of the Tax Law.

FINDINGS OF FACT

1. On September 11, 1974, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner Syrang Aero Club, Inc., for taxes due of \$301.00, plus penalty and interest of \$114.38, for a total of \$415.38. Said Notice was issued as a result of petitioner's

failure to pay a sales or use tax on the purchase of a 1957 Cessna airplane valued at \$4,300.00.

2. Petitioner timely filed an application for a hearing to review the aforementioned determination.

3. Syrang Aero Club, Inc. was incorporated on August 11, 1971 under section 402 of the Not-For-Profit Corporation Law of New York State. The Certificate of Incorporation, with reference to the organization's purposes, provides the following:

"(a) To promote interest in flying and enable and encourage numbers to improve and enjoy their flying skills and abilities.

(b) To provide members of the Syracuse Air National Guard of military and civilian status, as well as any other personnel who from time to time may qualify for membership, as well as any other qualified personnel under the By-Laws and regulations, through its operation and maintenance of its aircraft, the safest and most economical flying opportunity possible.

(c) To promote interest and participation in the New York Air National Guard by providing all members the opportunity to participate in recreational flying.

(d) To provide support such as the club is able, for activities of the New York Air National Guard as from time to time may be requested by the Commander or his representatives.

(e) To provide assistance to the community at large in time of disaster or other public need for aerial operations.

(f) To conduct a program or programs of flight safety and instruction for all members under proper regulation of the New York State Department of Education, the United States Federal Aviation Agency, and any other regulatory agencies applicable thereto, including the United States Veterans Administration when and if qualified.

(g) To properly prosecute the objectives and purposes set forth above, the Corporation shall have full power and authority to purchase, lease and otherwise acquire, hold, mortgage, convey and otherwise dispose of all kinds of property, both real and personal, both in this State and in all other states, territories and dependencies of the United States of America and any foreign countries, to publish periodicals, pamphlets, and other data as well as a periodic newsletter, etc., sell and distribute the same, receive gifts and endowments, maintain and operate such facilities and agencies as may be conducive to the ends of its incorporation herein set forth, and generally to perform all acts which may be deemed necessary or expedient for the purpose and successful prosecution of the objects and purposes for which the Corporation is created.

(h) To limit the liability of the members of the corporation for corporate acts to the extent of their capital interest in corporate membership or interest in assets, and no more (as per Section 517(a)), unless a contrary agreement is effected in writing for a specific purpose.

(i) To fix, levy, collect and enforce payment by any lawful means, all charges or assessments pursuant to the terms of the By-Laws or any other corporate related agreements; to pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the Corporation, including all licenses, taxes or governmental charges levied or imposed against the property of the Corporation.

(j) To borrow money, and with the assent of two thirds (2/3) of the members, mortgage, pledge, deed in trust, or hypothecate any and all of its real or personal property as security for money borrowed or debts incurred.

(k) To have and to exercise any and all powers, rights and privileges which a corporation organized under the Not-For-Profit Corporations Law of the State of New York by law may now or hereafter have or exercise including the power to participate in mergers and consolidations with other Not-For-Profit Corporations organized for the same purposes or annex additional property, etc. provided that any merger or consolidation or annexation shall have the assent of two-thirds (2/3) of the members.

(l) To provide for the amendment of the Certificate of Incorporation upon approval of two-thirds (2/3) of the members."

4. On January 8, 1974, petitioner amended its original certificate of incorporation as follows:

"The original purpose and the continuing purpose for which the corporation has functioned and will continue to function was substantially stated in paragraph 3(F) of the original certificate. Such purpose is in fact the only activity carried on by the members who are all pursuing increased flying rating and qualifications by their participation in the corporation. Consequently, for clarification of the purpose of the corporation shall be hereby stated in paragraph 3(F) of the original certificate and that all other stated purposes as stated in paragraph 3(a) through 3(e) of the original certificate are hereby eliminated, and only those purposes stated in paragraph 3(G) through 3(L) of the original certificate shall be retained which shall be necessary to support the exclusively educational intent and purpose of the organization. If they conflict in any way with the exclusively educational purposes of the corporation they shall be hereby eliminated.

Upon dissolution, the assets of the corporation, less any obligations, liens or encumbrances, shall be dedicated and distributed to the United States Government, Federal Aviation Agency or the Civil Air Patrol whichever the director of the Federal Aviation Agency shall determine is most appropriate at the time of such dissolution to further the intention of aviation education in the public interest. In no instances, shall the assets upon dissolution be distributed to the members of the corporation."

5. Petitioner's By-Laws provide in Section IX that membership will be restricted to members of the New York Air National Guard and civilian employees of the New York Air National Guard. Discharge from or termination of employment with the New York Air National Guard will result in simultaneous expulsion from the club. Memberships extended to persons other than New York Air National Guard members or civilian employees, will be restricted to those persons possessing skills needed by the club for its operation and to persons whose services would be of direct benefit to the club.

6. Petitioner's membership dues are \$15.00 per month plus \$14.00 per hour for the use of the aircraft. Flying instruction is not provided as part of the membership dues. Members desiring instruction are provided with names of available instructors by petitioner; however, the cost of such instruction is paid directly by the individual member.

7. Petitioner has one organized meeting in each quarter of a calendar year which is held in the operations office of the Air National Guard.

8. Petitioner's aircraft is garaged in an Air National Guard hangar on a space available basis. There is no charge by the Air National Guard to petitioner.

9. Flying hours qualify members for credit towards an increased Federal Aviation Agency experience rating. However, members of the Air National Guard are not required to increase their FAA rating.

10. Petitioner's aircraft was used by the Air National Guard to take aerial photographs.

11. Petitioner took the position that it is an instrumentality of the State of New York and the Federal government based on the following:

- a) its membership consists of members of the Air National Guard

b) the Guard provides storage facilities for the aircraft, use of its runway, and space for meetings; therefore; expenses relating thereto are paid by New York State and the Federal government.

c) it is an organization similar to an NCO Club and qualified for formation under Section 260 of the New York State Military Law; however, it was required to incorporate to obtain financing for the purchase of the aircraft.

12. Petitioner was not authorized nor sanctioned by the United States government or the State of New York as an instrumentality of either governing body.

13. The Department of Taxation and Finance has consistently followed Internal Revenue Service Rules and Regulations to determine the status of an organization claiming sales tax exemption, since section 1116(a)(4) of the Tax Law is similar to that of section 501(c)(3) of the Internal Revenue Code. The Internal Revenue Service denied petitioner tax exempt status under section 501(c)(3).

14. Petitioner acted in good faith at all times and did not willfully attempt to evade the tax.

CONCLUSIONS OF LAW

A. That section 1116(a)(4) of the Tax Law provides that the following organizations are exempt from sales or use tax:

"Any corporation, association, trust or community chest, fund or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which enures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

Petitioner is operated primarily for the benefit and recreational interests of its members. Its activities are only incidentally educational. Accordingly, petitioner is not organized and operated exclusively for educational or any of the exempt purposes within the meaning and intent of section 1116(a)(4) of the Tax Law.

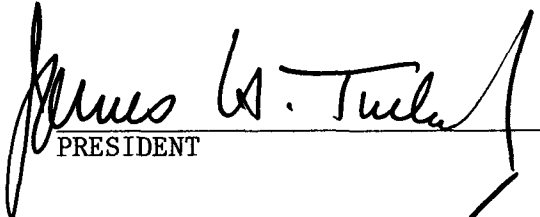
B. That petitioner is not an instrumentality of the State of New York or the United States of America within the meaning and intent of sections 1116(a)(1) and 1116(a)(2) of the Tax Law.

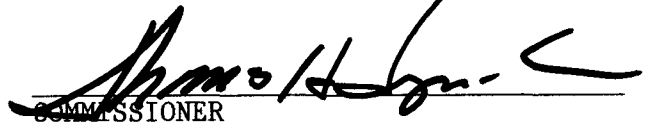
C. That the petition of Syrang Aero Club, Inc. is granted to the extent that interest in excess of the minimum statutory rate and the penalty imposed pursuant to section 1145(a) of the Tax Law are cancelled; that the Audit Division is hereby directed to modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued September 11, 1974; and that, except as so granted, the petition is in all other respects denied.


DATED: Albany, New York

STATE TAX COMMISSION

OCT 17 1980


PRESIDENT


COMMISSIONER


COMMISSIONER