

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
47-15 Properties, 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 3/1/76-5/31/76 & 3/1/77-5/31/77. :

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 3rd day of January, 1983, he served the within notice of Decision by certified mail upon 47-15 Properties, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

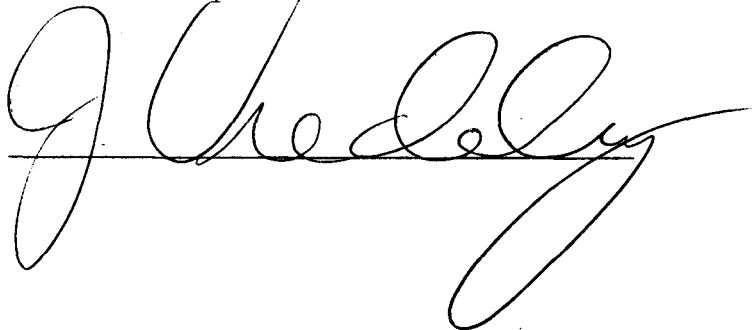
47-15 Properties, Inc.
1395 Beech Blvd.
Atlantic Beach, NY 11509

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
3rd day of January, 1983.

Kathy Pfaffenbach



STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
47-15 Properties, 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 3/1/76-5/31/76 & 3/1/77-5/31/77. :
_____:

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 3rd day of January, 1983, he served the within notice of Decision by certified mail upon Joseph Miller the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Joseph Miller
Miller, Ellin & Co.
450 Seventh Ave.
New York, NY 10001

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
3rd day of January, 1983.

Kathy Pfaffenbach

J. Vredenburg

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

January 3, 1983

47-15 Properties, Inc.
1395 Beech Blvd.
Atlantic Beach, NY 11509

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 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
Law Bureau - Litigation Unit
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Joseph Miller
Miller, Ellin & Co.
450 Seventh Ave.
New York, NY 10001
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
47-15 PROPERTIES, 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 Periods March 1, 1976	:	
through May 31, 1976 and March 1, 1977 through	:	
May 31, 1977.	:	

Petitioner 47-15 Properties, Inc., 1395 Beech Boulevard, Atlantic Beach, New York 11509, 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 periods March 1, 1976 through May 31, 1976 and March 1, 1977 through May 31, 1977 (File No. 26213).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 16, 1981 at 2:45 P.M. Petitioner appeared by Joseph Miller, CPA and Hilton Sokol, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Angelo Scopellito, Esq., of counsel).

ISSUES

I. Whether petitioner is a "social or athletic club" as defined in section 1101(d)(13) of the Tax Law and 20 NYCRR 527.11(b)(4).

II. Whether sales taxes erroneously collected by petitioner on cabana and locker rentals may be used to offset sales taxes not collected from the same customer on membership dues.

FINDINGS OF FACT

1. The business operations of petitioner, 47-15 Properties, Inc., are twofold; a beach club operated for members only on a seasonal basis and a catering service for weddings, barmitzvahs and parties. The catering service and banquet facilities are available to the general public.

The beach club facilities for members consisted of cabanas, lockers, a beach, two swimming pools, handball, volleyball and tennis courts, a snack bar and a day camp for children. The snack bar and tennis courts were leased to a concessionaire.

2. On February 20, 1979, as the result of an audit, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner covering the periods March 1, 1976 through May 31, 1976 and March 1, 1977 through May 31, 1977 for taxes due of \$24,743.00, plus minimum statutory interest of \$4,390.90, for a total of \$29,133.90.

3. The Audit Division determined that petitioner was a social or athletic club and therefore the dues paid by its members were subject to tax. The Division also considered parking fees as additional dues subject to tax.

Use taxes found due of \$43.39 on purchases of fixed assets are not at issue.

The audit of the catering operation disclosed no deficiency.

4. Petitioner's application for membership is in two parts. The first covers the rental of a cabana or locker. The rate charged for such rentals varried with their location. The second part of the application is for membership dues. The regular membership charge is for two persons. There are separate dues payable for additional adults and children. The day camp facility is also a separate charge.

Petitioner does not sell memberships apart from the rental of a cabana or locker.

5. During the period at issue, petitioner collected and paid over sales tax on the cabana and locker rentals. Petitioner did not collect tax on membership dues.

The Audit Division conceded that based on Breezy Point Surf Club, Inc v. State Tax Commission, 67 A.D.2d 760, __ NY2d __, the cabana and locker rentals constituted the rental of real property and consequently the sales tax collected thereon by petitioner was erroneous.

6. Petitioner's advertising brochure presented at the hearing indicated that petitioner planned activities for its members such as paddleball tournaments, backgammon games and dance lessons. However, the uncontroverted testimony of the manager of club facilities was that no social or athletic events or tournaments were planned or conducted by management or the members during the period at issue. Dance lessons were offered to members on Wednesday and Saturday for one hour each day.

7. The membership did not participate in or have any voice with respect to the conduct or management of petitioner corporation or of the business conducted by it; none of them participated in any elections or committees or in the selection of members or management.

8. Petitioner argued that if it is determined that its membership dues are taxable, the sales tax collected erroneously on cabana and locker rentals, should offset the sales tax it failed to collect on membership dues and any excess should be refunded to the member.

CONCLUSIONS OF LAW

A. That section 1105(f)(2) of the Tax Law imposes a tax on dues paid to any social or athletic club in this state.

That 20 NYCRR 527.11(b)(4) defines "club or organization" as any entity which is composed of persons associated for a common objective or common activities. Said regulation further provides that significant factors, any one of which may indicate that an entity is a club or organization are: an organizational structure which covers social activities, tournaments, dances (under the direction of management or the membership), elections, committees, participation in the selection of members and management of the club or organization and whether or not special rights or privileges are conferred upon members.

B. That under the circumstances herein, there is no association of the members other than by happenstance; membership is not restricted; members do not participate in, control or direct in any manner the operation of the organization nor have a proprietary interest therein. Therefore, petitioner is not a "club or organization" within the meaning and intent of section 1101(d)(13) of the Tax Law and 20 NYCRR 527.11(b)(4).

That petitioner's charges referred to as membership dues on its application for membership are merely seasonal charges for the use of its facilities and accordingly are not subject to the tax imposed under section 1105(f)(2) of the Tax Law (Westbury Atlantic Club, Inc., STC, August 14, 1981). Moreover, the parking fees do not constitute taxable dues under section 1105(f)(2) of the Tax Law.

C. That since petitioner is not a "club or organization", Issue II is moot.

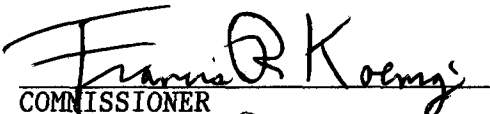
D. That the petition of 47-15 Properties, Inc. is granted to the extent indicated in Conclusion of Law "B"; that the Audit Division is hereby directed to modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued February 20, 1979; and that, except as so granted, the petition is in all other respects denied.

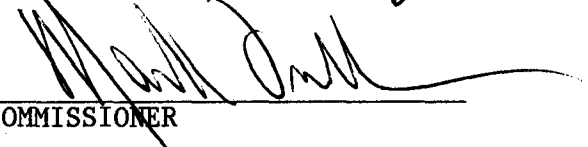
DATED: Albany, New York

JAN 3 1983

STATE TAX COMMISSION


ACTING PRESIDENT


COMMISSIONER


COMMISSIONER