

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Grasshopper Flying 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 :
1/1/75-5/31/77 & 12/1/77-2/28/78. :

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 26th day of February, 1982, he served the within notice of Decision by certified mail upon Grasshopper Flying Club, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Grasshopper Flying Club, Inc.
c/o Vincent Pangia
2 Cannon St.
Poughkeepsie, NY 12601

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
26th day of February, 1982.

Cornie G. Haglund

Jay Vredenburg

STATE OF NEW YORK.
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Grasshopper Flying 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 1/1/75-5/31/77 & 12/1/77-2/28/78 :

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 26th day of February, 1982, he served the within notice of Decision by certified mail upon Vincent C. Pangia the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Vincent C. Pangia
2 Cannon St.
Poughkeepsie, NY 12601

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
26th day of February, 1982.

Cornie A. Hagelund

J. J. Vredenburg

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

February 26, 1982

Grasshopper Flying Club, Inc.
c/o Vincent Pangia
2 Cannon St.
Poughkeepsie, NY 12601

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
Vincent C. Pangia
2 Cannon St.
Poughkeepsie, NY 12601
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

GRASSHOPPER FLYING 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 Periods January 1,
1975 through May 31, 1977 and December 1, 1977
through February 28, 1978.

Petitioner, Grasshopper Flying Club, Inc., c/o Vincent C. Pangia, 2 Cannon Street, Poughkeepsie, New York 12601, 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 January 1, 1975 through May 31, 1977 and December 1, 1977 through February 28, 1978 (File No. 24721).

A small claims hearing was held before Judy M. Clark, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on October 6, 1980 at 1:15 P.M. Petitioner appeared by Vincent C. Pangia, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Barry Bresler, Esq., of counsel).

ISSUES

I. Whether petitioner is entitled to a refund or credit of sales tax paid on its purchases of fuel, oil and aircraft repairs on the grounds that such purchases were for resale to its club members.

II. Whether petitioner is a social or athletic club within the meaning of section 1101(d)(13) of the Tax Law, its receipts constituting dues to such club.

III. Whether petitioner is liable for sales tax assessed as a result of its failure to file a sales and use tax return for the period ended February 28, 1978.

FINDINGS OF FACT

1. On December 21, 1977, Grasshopper Flying Club, Inc. filed an Application for Credit or Refund of State and Local Sales or Use Tax for the period January 1, 1975 through May 31, 1977 in the amount of \$945.70. Petitioner sought a refund in the amount of \$535.05 and a credit of \$410.65 claimed on its sales and use tax return filed for the period June 1, 1976 through May 31, 1977 on the grounds that its purchases of fuel, oil and aircraft repairs were for resale to its club members.
2. The Audit Division denied the refund/credit application on January 4, 1979 on the basis that all the purchases made by petitioner were subject to tax and that petitioner did not establish that they were resold or exempt in any manner.
3. On August 28, 1978, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against Grasshopper Flying Club, Inc. for the period December 1, 1977 through February 28, 1978. The Notice was issued in the amount of \$1,000.00 plus penalties and interest as a result of petitioner's failure to file a sales and use tax return for that period.
4. Petitioner's certificate of incorporation designated the purposes for which it was formed as the promotion of private flying and the owning of aircraft and equipment necessary for its operations for the exclusive use of its members.

5. It was the Audit Division's position that; (a) petitioner was a social or athletic club within the meaning of section 1101(d)(13) of the Tax Law and the fees paid by its members constituted dues to such club; therefore, no resale was made of the purchases at issue; or (b) that if petitioner was a legal entity which leased airplanes to its members, no evidence was submitted to show that a resale of such purchases was made, thereby entitling it to a refund.

6. It was the petitioner's position that it was leasing aircraft to its members; therefore, the purchases were for resale and it was entitled to a credit or refund on its purchases. Petitioner reported sales tax on the receipts from its members, and therefore argued that its purchases were in effect being taxed twice.

7. Petitioner submitted no evidence to show that a resale of the purchases at issue occurred or that the receipts from its club members did not constitute dues paid to a social or athletic club.

8. Petitioner filed its sales and use tax returns on an annual filing basis; therefore, the Audit Division conceded that the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued for the period ended February 28, 1978 should be cancelled.

CONCLUSIONS OF LAW

A. That petitioner failed to show through documentary evidence or other substantial evidence that the purchases on which it claimed a refund of sales tax were resold to its club members and therefore not subject to tax under section 1105(a) of the Tax Law.

B. That petitioner failed to introduce any evidence or provide testimony to show that it was not a social or athletic club within the meaning and intent

of section 1101(b)(13) of the Tax Law; therefore, the charges to its club members constitute dues which are subject to tax under section 1105(f)(2) of the Tax Law.

C. That the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued August 28, 1978 is cancelled pursuant to Finding of Fact "8".

D. That the petition of Grasshopper Flying Club, Inc. is granted to the extent indicated in Conclusion "C" above; and that the Denial of Refund issued January 4, 1979 is sustained.

DATED: Albany, New York

~~FEB 27 1982~~ FEB 26 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER