

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

March 26, 1982

Rotary Club of Kingston, Inc.
1 Albany Ave.
Kingston, NY 12401

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

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Wayne L. Graff
Wilkie & Graff
78 Main St.
Kingston, NY 12401
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ROTARY CLUB OF KINGSTON	:	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 December 1, 1972	:	
through February 29, 1976.	:	

Petitioner, Rotary Club of Kingston, One Albany Avenue, Kingston, New York 12401, 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 December 1, 1972 through February 29, 1976. (File No. 17244).

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 January 8, 1980 at 1:15 P.M. Petitioner appeared by Wilkie & Graff (Wayne L. Graff, Esq. of counsel). The Audit Division appeared by Ralph J. Vecchio, Esq. (Harry Kadish, Esq. of counsel). A continued hearing was scheduled on May 22, 1981; however, petitioner advised the State Tax Commission that it wished to rest on the pleadings and evidence presented at the earlier hearing.

ISSUE

Whether the Rotary Club of Kingston was a purchaser of restaurant meals served its members thereby making it liable for sales tax on such meals or whether the meals were purchased by the club members individually.

FINDINGS OF FACT

1. On October 15, 1976, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against the Rotary Club of Kingston for the period December 1, 1972 through February 29, 1976. The Notice asserted tax due of \$1,610.61 plus penalty and interest of \$673.82 for a total of \$2,284.43.

2. The above Notice was issued as a result of a field audit on the books and records of the Governor Clinton Hotel and represented purchases of meals allegedly made by petitioner without payment of sales tax. The Governor Clinton Hotel was in possession of an exempt organization certificate issued December 22, 1967 from the Rotary Club of Kingston; therefore, it did not collect the sales tax on meals totaling \$22,965.80 served to Rotary Club members.

3. It was the Audit Division's position that since the Rotary Club is not an organization exempt from tax under section 1116(a)(4) of the Tax Law, the tax is due on meals served to its club members under section 1105(d)(i) of the Tax Law.

4. Weekly luncheon meetings were held by the Rotary Club at the Governor Clinton Hotel. Club members attending the luncheon meetings selected choices from a limited menu and paid the restaurant cashier. The member was given a blue card by the cashier to show: (1) that the meal was paid for and (2) when filled in with the member's name, to show attendance at the scheduled meeting. The blue cards were picked up by the waiter serving the meal and subsequently turned over to the club.

5. The Club had one or two guest speakers at its meetings three times a month. Meals served to its guest speakers were paid for from the funds of the

Rotary Club. Petitioner estimated the individual cost of such a meal was \$3.50.

6. Petitioner argued that the Rotary Club was not a purchaser within the definition of section 1101(b)(2) of the Tax Law with the exception of meals served to its guest speakers. Petitioner argued that the meals served were purchased by and paid for by the club members individually; therefore, the Rotary Club was not liable for any sales tax due thereon.

7. Petitioner acted in good faith in that it assumed the sales tax was being collected on meals served its members and guest speakers. Petitioner's current officers had no knowledge of the exempt organization certificate issued in 1967 under signature of a prior official.

CONCLUSIONS OF LAW

A. That petitioner was not a purchaser within the meaning and intent of section 1101(b)(2) of the Tax Law of meals served its club members. The purchases were made by each club member individually and paid for by them individually. Therefore, petitioner cannot be held liable for tax on receipts for meals served to its members.

B. That petitioner was a purchaser within the meaning and intent of section 1101(b)(2) of the Tax Law of meals served to its guest speakers and paid for from the funds of the organization. That such purchases were limited to \$819.00 in the audit period pursuant to Finding of Fact "5".

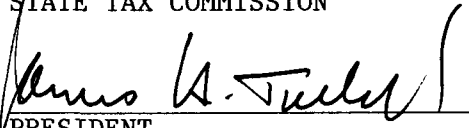
C. That the petition of Rotary Club of Kingston is granted to the extent indicated in Conclusions of Law "A" and "B" above; that the Audit Division is directed to accordingly modify the Notice of Determination and Demand for


Payment of Sales and Use Taxes Due issued October 15, 1976 with the minimum statutory interest thereon; and that, except as so granted, the petition is in all other respects denied.

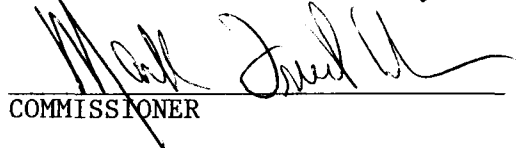
DATED: Albany, New York

MAR 26 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
Rotary Club of Kingston, 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 12/1/72-2/29/76.

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 March, 1982, he served the within notice of Decision by certified mail upon Rotary Club of Kingston, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Rotary Club of Kingston, Inc.
1 Albany Ave.
Kingston, NY 12401

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 March, 1982.

Janice A. Haglund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of
Rotary Club of Kingston, 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 12/1/72-2/29/76.

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 March, 1982, he served the within notice of Decision by certified mail upon Wayne L. Graff the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Wayne L. Graff
Wilkie & Graff
78 Main St.
Kingston, NY 12401

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 March, 1982.

Ann O. Haglund

Jay Vredenburg

P 230 842 302
RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
 NOT FOR INTERNATIONAL MAIL
 (See Reverse)

PS Form 3800, Apr. 1976

SENT TO		<i>Wayne L. Greff</i>	
STREET AND NO.		<i>W. Greff & Co.</i>	
P.O., STATE AND ZIP CODE		<i>78 Main St Longton N.Y. 12401</i>	
POSTAGE		<i>Longton N.Y. 12401</i>	
CONSULT POSTMASTER FOR FEES	OPTIONAL SERVICES	CERTIFIED FEE	¢
		SPECIAL DELIVERY	¢
		RESTRICTED DELIVERY	¢
		RETURN RECEIPT SERVICE	¢
		SHOW TO WHOM AND DATE DELIVERED	¢
		SHOW TO WHOM, DATE, AND ADDRESS OF DELIVERY	¢
		SHOW TO WHOM AND DATE DELIVERED WITH RESTRICTED DELIVERY	¢
	SHOW TO WHOM, DATE AND ADDRESS OF DELIVERY WITH RESTRICTED DELIVERY	¢	
TOTAL POSTAGE AND FEES		\$	
POSTMARK OR DATE			

P 230 842 301
RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
 NOT FOR INTERNATIONAL MAIL
 (See Reverse)

PS Form 3800, Apr. 1976

SENT TO		<i>Rotary Club of Longton</i>	
STREET AND NO.		<i>Albany Ave.</i>	
P.O., STATE AND ZIP CODE		<i>Longton N.Y. 12401</i>	
POSTAGE		\$	
CONSULT POSTMASTER FOR FEES	OPTIONAL SERVICES	CERTIFIED FEE	¢
		SPECIAL DELIVERY	¢
		RESTRICTED DELIVERY	¢
		RETURN RECEIPT SERVICE	¢
		SHOW TO WHOM AND DATE DELIVERED	¢
		SHOW TO WHOM, DATE, AND ADDRESS OF DELIVERY	¢
		SHOW TO WHOM AND DATE DELIVERED WITH RESTRICTED DELIVERY	¢
	SHOW TO WHOM, DATE AND ADDRESS OF DELIVERY WITH RESTRICTED DELIVERY	¢	
TOTAL POSTAGE AND FEES		\$	
POSTMARK OR DATE			