

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

April 6, 1983

Engineers Country Club, Inc.
c/o Keith J. Roth
Glenwood Rd.
Roslyn, NY 11576

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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of

Engineers Country 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:
5/31/79.

State of New York
County of Albany

David Parchuck, 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 6th day of April, 1983, he served the within notice of Decision by certified mail upon Engineers Country Club, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Engineers Country Club, Inc.
c/o Keith J. Roth
Glenwood Rd.
Roslyn, NY 11576

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
6th day of April, 1983.

David Parchuck

James R. Hayward

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
ENGINEERS COUNTRY 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 March 1, 1979	:	
through May 31, 1979.	:	

Petitioner, Engineers Country Club, Inc., c/o Keith J. Roth, Glenwood Road, Roslyn, New York 11576, 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 March 1, 1979 through May 31, 1979 (File No. 32760).

A small claims hearing was held before Joseph Chyrywaty, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 25, 1982, at 9:15 A.M. Petitioner appeared by Keith J. Roth. The Audit Division appeared by Ralph J. Vecchio, Esq. (Alexander Weiss, Esq., of counsel).

ISSUE

Whether the penalty asserted against petitioner for the late filing of a sales tax return should be cancelled.

FINDINGS OF FACT

1. Petitioner, Engineers Country Club, Inc., prepared its March Estimated Monthly Sales Tax Return for March, 1979, on March 19, 1979. Check number 471, for \$17,707.00 in payment thereof was also dated March 19, 1979.

The envelope in which the return was mailed had two post-marks. One was a metered stamp of March 20, 1979 and the other was that of the United States Postal Service and was dated March 26, 1979.

The return was received by the Audit Division on March 28, 1979.

2. On November 5, 1979, the Tax Compliance Bureau issued a Notice and Demand for Payment of Sales and Use Taxes Due against petitioner asserting penalty and interest of \$736.54 for the late filing of the aforesaid return.

3. Petitioner timely filed and paid all sales tax returns filed for previous and subsequent periods.

4. Petitioner hand carried the return to the Post Office on March 20, 1979.

CONCLUSIONS OF LAW

A. That section 1145(a)(1) of the Tax Law provides for the remission of all penalty, and that portion of interest exceeding the minimum amount prescribed by law when it is determined by the Commission that the delay or failure to file or pay the tax due is for reasonable cause and not willful neglect.

B. That petitioner timely prepared and mailed the estimated monthly return for March, 1979; that the receipt of the return on March 28, 1979 was not caused by petitioner. Accordingly, the penalty is cancelled and interest shall be reduced to the minimum statutory rate.

C. That the petition of Engineers Country Club, Inc. is granted to the extent indicated in Conclusion of Law "B"; that the Audit Division is hereby directed to modify the Notice and Demand for Payment of Sales and Use Taxes Due

issued November 5, 1979; and that, except as so granted, the petition is in all other respects denied.


DATED: Albany, New York

APR 06 1983

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

P 389 758 763
RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
 NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Engineer Country Club Inc.</i>	
Street and No. <i>10 Keith & Rath</i>	
P.O., State and ZIP Code <i>Haslip, NY 11576</i>	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	
Return Receipt Showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	

PS Form 3800, Feb. 1982