

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

December 12, 1983

Knickerbocker Field Club
c/o Desmond L. Simmons, Pres.
114 East 18th St.
Brooklyn, NY 11226

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, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law 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
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Marvin Friedman
104-43 Lefferts Blvd.
Richmond Hill, NY 11419
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition of Knickerbocker Field Club	: : :	: : :
for Redetermination of a Deficiency or Revision of a Determination or Refund of Sales & Use Tax under Article 28 & 29 of the Tax Law for the Period 6/1/73-5/31/77.	: : : :	: : : :

AFFIDAVIT OF MAILING

State of New York }

ss.:

County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 12th day of December, 1983, he served the within notice of Decision by certified mail upon Knickerbocker Field Club, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Knickerbocker Field Club
c/o Desmond L. Simmons, Pres.
114 East 18th St.
Brooklyn, NY 11226

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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
12th day of December, 1983.

David Parchuck

James A. Shapiro
pursuant to Tax Law section 174

Authorized to administer oaths

STATE TAX COMMISSION

In the Matter of the Petition
of
Knickerbocker Field Club
for Redetermination of a Deficiency or Revision
of a Determination or Refund of Sales & Use Tax
under Article 28 & 29 of the Tax Law for the
Period 6/1/73-5/31/77.

State of New York }
County of Albany } ss.:

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 12th day of December, 1983, he served the within notice of Decision by certified mail upon Marvin Friedman, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Marvin Friedman
104-43 Lefferts Blvd.
Richmond Hill, NY 11419

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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
12th day of December, 1983.

David Parachuck

Comm'r R. H. [Signature]
pursuant to Tax Law section 174

Authorized to administer oaths

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
KNICKERBOCKER FIELD CLUB	:	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 June 1, 1973	:	
through May 31, 1977.	:	

Petitioner, Knickerbocker Field Club, 114 East 18th Street, Brooklyn, New York 11226, 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 June 1, 1973 through May 31, 1977 (File No. 21581).

A small claims hearing was held before James Hoefer, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 29, 1981 at 1:15 P.M., continued on October 25, 1982 at 1:15 P.M., and concluded on January 11, 1983 at 9:15 A.M., with all briefs to be submitted by March 12, 1983. Petitioner appeared by Marvin Friedman, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (William Fox, Esq., of counsel) on January 29, 1981 and by Paul B. Coburn, Esq. (William Fox, Esq., of counsel) on October 25, 1982 and January 11, 1983.

ISSUES

I. Whether the Audit Division properly held dues paid by petitioner club members subject to tax imposed by section 1105(f)(2) of the Tax Law.

II. Whether the Audit Division properly held tennis fees paid in addition to the aforesaid dues subject to tax imposed by section 1105(f)(2) of the Tax Law.

III. Whether the Audit Division properly held the total receipts from the sales of food, beverages and miscellaneous supplies billed to petitioner club members subject to sales tax.

IV. Whether a consent extending the period of limitation for the issuance of an assessment was timely executed under the provisions of section 1147(c) of the Tax Law.

FINDINGS OF FACT

1. On November 17, 1977, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against Desmond L. Simmons d/b/a Knickerbocker Field Club [sic] covering the period June 1, 1973 through May 31, 1977. The Notice was issued as a result of a field audit and asserted additional tax due of \$11,097.97, plus penalty and interest of \$5,020.54, for a total of \$16,118.31.

2. Petitioner executed a consent to extend the period of limitation for the issuance of an assessment for the period June 1, 1973 through May 31, 1976 to September 20, 1977. Such consent was received by the Brooklyn office of the Audit Division on September 29, 1976.

Petitioner executed a second consent to extend the period of limitation for the issuance of an assessment for the period June 1, 1973 through May 31, 1977 to September 20, 1978. Such consent was received by the Brooklyn office of the Audit Division on August 16, 1977.

3. On October 25, 1982, the Audit Division stipulated that the tax liability asserted due is reduced to \$5,333.02 and further stipulated on January 11, 1983 that the penalties and interest in excess of the minimum statutory rate should be waived.

4. A written stipulation was entered into between petitioner and the Audit Division covering pertinent facts as follows: The Knickerbocker Field Club is a private membership club founded in 1889. Its aim, as set forth in the By-Laws, is "the promotion of social relations and the encouragement of athletic sports among its members".

All members of the club must pay general yearly club dues (\$300.00 for a family membership). This general membership entitles the member to enter the club and participate in the numerous social activities that exist.

In order to participate in the activity of tennis, the general members must pay an additional summer seasonal charge of \$220.00. The outdoor season lasts for approximately five months.

For the use of its members, the club operates a cocktail lounge with a small kitchen. All sales are rung up on the register by the bartender. All sales and all other incoming monies are listed on a daily sheet.

5. On audit, the Audit Division held the above dues and tennis fees paid by petitioner club members subject to sales tax. In addition, based on the revised tax due as stipulated in Finding of Fact "3", the Audit Division held the total receipts recorded by petitioner subject to tax from the following sales: tennis balls, towels, entertainment,¹ bridge cards, miscellaneous, liquor, beer, soda and food.

It was the Audit Division's position that petitioner did not separately state the sales tax collected on its receipts other than dues and tennis fees; therefore, the entire receipts therefrom are subject to the sales tax.

6. Petitioner duly reported and remitted sales tax on its receipts from club membership dues and tennis fees. Petitioner argued at the hearing,

¹ Entertainment sales were parties sponsored by club members to which beverage sales were made at a discount.

however, that its membership dues should not be held subject to the tax imposed by Tax Law §1105(f)(2). Petitioner did not seek a refund of the taxes remitted thereon, but sought only to reduce the audit findings by such amount.

7. Petitioner argued that section 1105(f)(2) of the Tax Law does not state that all dues to a social or athletic club are taxable, but qualifies the imposition of tax to clubs with active annual members who pay more than \$10.00 in dues. Petitioner further argued that an active annual member, as defined by Tax Law §1101(d)(1), is one who is not a life member but enjoys full club privileges as distinguished from the privileges enjoyed by a person holding a nonresident membership, an associate membership, or other partial or restricted membership. Hence, it was petitioner's position that the club had no active annual members who enjoyed full club privileges because the payment of dues did not in and of itself entitle the member to anything more than access to the club. It did not entitle the member to the use of the tennis facilities at the club unless an additional fee was paid.

With respect to the tennis fees, petitioner argued that these were charges to a patron for admission to, or use of, facilities for sporting activities in which such patron was a participant, and therefore, such receipts are not within the purview of Tax Law §1105(f)(1) and (2).

8. Petitioner contended that all receipts relating to the sale of food, liquor, beer, soda, tennis balls, lockers and towels should have been divided by approximately 107 percent before the sales tax was calculated. As contained in the written stipulation (Finding of Fact "4"), most of the above sales were initially recorded on a cash register which produced a tape and which showed only the date and the amount of the purchase. The member either paid in cash

or signed the tape (chit). The chit was given back to the bartender for recordkeeping purposes. At the end of the month, a statement was sent to the member which indicated the total indebtedness to the club. Members paying cash did not receive a chit.²

Petitioner argued that its customers were aware of the inclusion of sales tax in the selling prices because signs were posted periodically indicating the selling price and appropriate tax or the inclusion of the sales tax therein. Petitioner further contended that members were apprised of same at annual meetings held. Petitioner submitted affidavits signed by approximately half the club membership indicating their awareness of paying sales tax on all purchases made at the club.

CONCLUSIONS OF LAW

A. That section 1105(f)(2) of the Tax Law imposes sales tax on dues paid to any social or athletic club if the dues of an active annual member are in excess of ten dollars per year. Dues as defined by section 1101(d)(6) of the Tax Law are any dues or membership fee including any assessment, irrespective of the purpose for which made, and any charges for social or sports privileges or facilities, except charges for sports privileges or facilities offered to members' guests which would otherwise be exempt if paid directly by such guests. That Tax Law §1101(d)(13) defines social or athletic club as any club or organization of which a material purpose or activity is social or athletic.

B. That petitioner is a social club within the meaning and intent of section 1101(d)(13) of the Tax Law. Petitioner's argument that it has no active annual members with full club privileges is without merit in that the club members have an option as to the type of membership they seek. Members

² The Audit Division excluded from petitioner's receipts subject to tax \$3,071.00 constituting sales tax included in such cash sales.

not wishing to use the tennis facility pay dues for club membership only. Those members wishing to make use of the tennis facilities pay an additional fee which constitutes additional dues as set forth by section 1101(d)(6) of the Tax Law. That the dues paid by club members are therefore subject to the tax imposed by Tax Law §1105(f)(2).

C. That section 1132(a) of the Tax Law provides that every person required to collect the tax shall collect the tax from the customer when collecting the price to which it applies. If the customer is given any sales slip, invoice, receipt or other statement or memorandum of the price, the tax shall be stated, charged and shown separately on the first of such documents given to him.

That petitioner charged sales tax to its members who were aware of the inclusion of same in the selling prices. The Audit Division acquiesced to the fact that the sales tax was included in cash sales made. Although members were given a chit to sign for billing purposes, this did not constitute a written receipt nor change the selling prices so as not to include the sales tax therein.

D. That section 1147(c) of the Tax Law provides:

"[w]here, before the expiration of the period prescribed herein for the assessment of an additional tax, a taxpayer has consented in writing that such period be extended, the amount of such additional tax due may be determined at any time within such extended period."
(Emphasis added.)

That the consent extending the period of limitation for the issuance of an assessment for the period June 1, 1973 through May 31, 1976 to September 20, 1977 was executed on September 29, 1976, after the expiration of the period

prescribed for the quarter ended August 31, 1973. That the additional sales tax asserted due for that quarter is hereby cancelled.

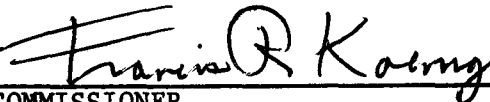
E. That the petition of Knickerbocker Field Club is granted to the extent stipulated in Finding of Fact "3" and further concluded in Conclusions of Law "C" and "D" above; that the Audit Division is directed to accordingly modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued November 17, 1977; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

STATE TAX COMMISSION

DEC 12 1983


PRESIDENT


COMMISSIONER


COMMISSIONER

P 470 315 156
RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
 NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Knickerbocker Field Club</i>	
Street and No. <i>114 East 18th St.</i>	
P.O., State and ZIP Code <i>Brooklyn, NY 11226</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

P 470 315 157
RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
 NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Martin Friedman</i>	
Street and No. <i>104-43 Lyferts Blvd.</i>	
P.O., State and ZIP Code <i>Richmond Hill, NY 11419</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