

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Club Caribbean of Rochester, Inc. :  
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 3/1/76-2/28/79. :  
:

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 9th day of November, 1984, he served the within notice of Decision by certified mail upon Herbert N. Stern, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Herbert N. Stern  
Elliott, Stern & Calabrese  
One E. Main St.  
Rochester, NY 14614

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  
9th day of November, 1984.

David Parchuck

Anna A. Hagood  
Authorized to administer oaths  
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

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Club Caribbean of Rochester, Inc.  
20 Lake Ave.  
Rochester, NY 14608

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  
9th day of November, 1984.

David Parchuck

James A. Hapgood  
Authorized to administer oaths  
pursuant to Tax Law section 174

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

November 9, 1984

Club Caribbean of Rochester, Inc.  
20 Lake Ave.  
Rochester, NY 14608

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  
Herbert N. Stern  
Elliott, Stern & Calabrese  
One E. Main St.  
Rochester, NY 14614  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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|---|---|----------|
| In the Matter of the Petition                   | : |          |
| of  | : |          |
| CLUB CARIBBEAN OF ROCHESTER, 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, 1976     | : |          |
| through February 28, 1979.                      | : |          |

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Petitioner, Club Caribbean of Rochester, Inc., P.O. Box 9544, Midtown Plaza, Rochester, New York 14608, 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, 1976 through February 28, 1979 (File No. 30287).

A small claims hearing was held before John F. Koagel, Hearing Officer, at the offices of the State Tax Commission, One Marine Midland Plaza, Room 1300, Rochester, New York, on March 8, 1983 at 2:45 P.M. and continued to its conclusion at the same location on December 6, 1983 at 9:15 A.M. Petitioner appeared by Herbert N. Stern, Esq., John Bouchard, Esq. and Bert D. Butler, C.P.A. The Audit Division appeared by John P. Dugan, Esq. (Thomas C. Sacca, Esq., of counsel).

ISSUES

I. Whether petitioner, Club Caribbean of Rochester, Inc., is an exempt organization under section 1116(a)(4) of the Tax Law.

II. Whether petitioner is required to collect sales tax on its dues and door charges.

III. Whether the Audit Division correctly determined the sales tax liability of petitioner.

FINDINGS OF FACT

1. On February 20, 1980, 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 the Club Caribbean of Rochester, Inc. assessing \$11,604.60 in tax due plus interest for the period March 1, 1976 through February 28, 1979. Said notice was timely issued pursuant to signed consents that extended the statutory period of limitation to March 20, 1980.

2. On January 30, 1979, petitioner, Club Caribbean of Rochester, Inc., received Federal income tax exempt status as a social welfare organization under section 501(c)(4) of the Internal Revenue Code. Exempt status as an exempt organization under section 1116(a)(4) of the New York State Sales and Use Tax Law has not been granted to petitioner, although petitioner alleges that an application therefor has been filed.

3. Petitioner has operated since 1969 as a membership corporation. Said corporation is governed by a nine member board of elected representatives. It is this board that jointly makes policy decisions for the petitioner; although, all of the club's members have an opportunity to voice their opinion on said decisions at open meetings which are held on a monthly basis. Only one board member, Stanley R. George, the club's president, receives a salary.

4. Petitioner's organizational purposes, as set forth in the Certificate of Incorporation under paragraph two, are as follows:

"The purpose of the association shall be to promote the friendship of its members; to inculcate in them a high sense of loyalty to each other; to stimulate their intellectual advancement, and to hold meetings and social gatherings for the better realization of the above named purposes; to cultivate social intercourse among its members who are of West Indian heritage and background; to establish a center of work and interest for the members in order to improve their health, physical and mental condition and to promote friendship, sociability and culture among its members; to establish funds to promote the educational advancement of its members and their children."

5. Petitioner has regular functions at its facilities which include free food nights, dances (with music provided) and celebrations. Full-time members pay a \$50.00 initiation fee and \$4.00 per month membership dues for which they receive full membership privileges. Non-members are assessed a \$2.00 door charge for admission to petitioner's facilities. Said assessment petitioner considers a temporary membership fee. The payment thereof entitles the non-members to full membership privileges for one month, thus enabling them an opportunity to decide whether or not full-time membership is desired. Sales tax was neither collected nor remitted on the dues or door charges.

6. Petitioner's facilities contain a bar and kitchen. Food is served buffet style from a window in the kitchen. There is no dining room or banquet room in petitioner's facilities.

7. The dues and door charges collected by petitioner were used for building upkeep, an annual Christmas party for senior citizens, baskets for needy persons, help for sick and needy members and gift scholarships for needy students. No evidence or testimony was offered regarding the amounts expended for such purposes.

8. Petitioner engages in no political activities.

9. On audit, petitioner's bar sales and purchases were examined and the bar sales were accepted as reported. The auditor then transcribed petitioner's sales journal as no tax was collected or remitted on the dues and door charges which the auditor deemed taxable. The sales journal reflected four categories of sales, i.e., bar, door charges, dues and parties.

The auditor considered petitioner to be a social club not exempt from the payment or collection of sales and use taxes. The auditor deemed that the dues which petitioner collected in the amount of \$4,770.00 were taxable under

section 1105(f)(2) of the Tax Law and computed a tax due thereon of \$333.90.

In addition, the auditor deemed that the door charges in the amount of \$161,010.00 were taxable admission charges under section 1105(f)(1) of the Tax Law and computed a tax on said charges of \$11,270.70. The tax asserted due for dues and admission charges totalled \$11,604.60, which is the total tax assessed on the Notice referred to in Finding of Fact "1".

10. Petitioner maintains that since its operations consist of promoting West Indian culture and carrying on of charitable purposes with all funds being used for said purposes, it is an organization exempt from the collection and payment of sales and use taxes, particularly with respect to the dues and door charges.

11. Petitioner produced no evidence at the hearing to show that the amounts of the dues and/or door charges determined by the Audit Division were inaccurate.

#### CONCLUSIONS OF LAW

A. That section 1116(a)(4) of the Tax Law exempts from sales and use tax "(a)ny corporation, association, trust, or community chest, fund or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes..."

B. That an organization must prove that it is organized as well as operated for one or more of the enumerated exempt purposes. Whether an organization is organized for one or more exempt purposes is dependent on the provisions of the organizing documents. [20 NYCRR 529.7(b)(2) and 529.7(c).]

C. That the certificate of incorporation of the Club Caribbean of Rochester, Inc. indicates that the Club Caribbean of Rochester, Inc. does not meet the organizational test pursuant to 20 NYCRR 529.7. The Club Caribbean of Rochester,

Inc. is therefore not an organization exempt from sales and use tax under section 1116(a)(4) of the Tax Law.

D. That section 1105(f)(2) of the Tax Law imposes a tax on "(t)he dues paid to any social or athletic club in this state if the dues of an active annual member, exclusive of the initiation fee, are in excess of ten dollars per year, and on the initiation fee alone, regardless of the amount of dues, if such initiation fee is in excess of ten dollars..."

E. That the term "club" means any entity which is composed of persons associated for a common objective or common activity. A social club is any club which has as a material purpose or activity the arranging of periodic dances, dinners, meetings or other functions affording its members an opportunity of congregating for social interrelationship. [20 NYCRR 527.11(b)(5)(i) and 527.11(b)(6).]

F. That the Club Caribbean of Rochester, Inc. is a social club as said is defined in 20 NYCRR 527.11(b). The initiation fee of \$50.00 for membership in the Club Caribbean of Rochester, Inc. is accordingly subject to sales tax pursuant to section 1105(f)(2) of the Tax Law.

G. That section 1101(d)(6) of the Tax Law defines the term dues as "(a)ny dues or membership fee including any assessment, irrespective of the purpose for which made, and any charges for social...privileges or facilities..."

H. That since the dues paid by a member to the Club Caribbean of Rochester, Inc. are in excess of ten dollars in the aggregate, said dues are also subject to sales tax pursuant to section 1105(f)(2) of the Tax Law.

I. That section 1105(f)(1) of the Tax Law imposes a sales tax on "(a)ny admission charge where such admission charge is in excess of ten cents to or for the use of any place of amusement in this state...". Section 1101(d)(10)



of the Tax Law defines place of amusement as any place where any facilities for entertainment or amusement are provided.

J. That the door charges of the Club Caribbean of Rochester, Inc. to non-members constitute an admission charge within the meaning and intent of section 1105(f)(1) of the Tax Law.

K. That the audit of the Audit Division was performed in accordance with section 1138 of the Tax Law and petitioner failed to show where the amounts of dues and door charges determined by the Audit Division were incorrect.

L. That the petition of the Club Caribbean of Rochester, Inc. is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued February 20, 1980 is sustained.

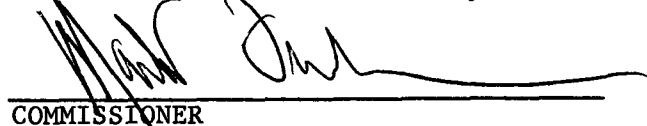
DATED: Albany, New York

STATE TAX COMMISSION

NOV 09 1984

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

P 693 168 871

**RECEIPT FOR CERTIFIED MAIL**

NO INSURANCE COVERAGE PROVIDED  
NOT FOR INTERNATIONAL MAIL

(See Reverse)

★ U.S.G.P.O. 1983-403-517  
PS Form 3800, Feb. 1982

|   |    |
|---|----|
| Sent to<br><u>Club Caribbean of Rochester, Inc.</u>           |    |
| Street and No.<br><u>60 Lake Ave.</u>                         |    |
| P.O., State and ZIP Code<br><u>Rochester, NY 14608</u>        |    |
| 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  |    |

P 693 168 876

**RECEIPT FOR CERTIFIED MAIL**

NO INSURANCE COVERAGE PROVIDED  
NOT FOR INTERNATIONAL MAIL

(See Reverse)

★ U.S.G.P.O. 1983-403-517  
PS Form 3800, Feb. 1982

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|---|----|
| Sent to<br><u>Herbert N. Stern</u>                            |    |
| Street and No.<br><u>Elliot, Stern &amp; Calabrese</u>        |    |
| P.O., State and ZIP Code<br><u>One E. Main St.</u>            |    |
| 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  |    |