

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Crag Burn Club, Inc./Crag Burn Golf Club, Inc. : AFFIDAVIT OF MAILING  
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 11/30/78-2/28/82. :  
:

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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 15th day of April, 1985, he served the within notice of Decision by certified mail upon Crag Burn Club, Inc./Crag Burn Golf Club, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Crag Burn Club, Inc./  
Crag Burn Golf Club, Inc.  
N. Davis Road  
East Aurora, NY 14052

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  
15th day of April, 1985.

David Parchuck

James P. Hogan  
Authorized to administer oaths  
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

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of :  
Crag Burn Club, Inc./Crag Burn Golf Club, Inc. : AFFIDAVIT OF MAILING  
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of a Determination or Refund of Sales & Use Tax :  
under Article 28 & 29 of the Tax Law for the :  
Period 11/30/78-2/28/82. :  
:

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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 15th day of April, 1985, he served the within notice of Decision by certified mail upon Gary E. Blum, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Gary E. Blum  
Seidman & Seidman  
135 Delaware Ave.  
Buffalo, NY 14202

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  
15th day of April, 1985.

David Parchuck

[Signature]

Authorized to administer oaths  
pursuant to Tax Law section 174

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

April 15, 1985

Crag Burn Club, Inc./  
Crag Burn Golf Club, Inc.  
N. Davis Road  
East Aurora, NY 14052

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  
Gary E. Blum  
Seidman & Seidman  
135 Delaware Ave.  
Buffalo, NY 14202  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
CRAG BURN CLUB, INC./	:	DECISION
CRAG BURN GOLF CLUB, INC.	:	
	:	
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 November 30, 1978	:	
through February 28, 1982.	:	

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Petitioners, Crag Burn Club, Inc./Crag Burn Golf Club, Inc., North Davis Road, East Aurora, New York 14052, 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 November 30, 1978 through February 28, 1982 (File No. 45309).

A formal hearing was held before Arthur Bray, Hearing Officer, at the offices of the State Tax Commission, 65 Court Street, Buffalo, New York, on June 27, 1984 at 10:45 A.M., with all briefs to be submitted on or before August 23, 1984. Petitioner appeared by Gary E. Blum, C.P.A. The Audit Division appeared by John P. Dugan, Esq. (Deborah J. Dwyer, Esq., of counsel).

ISSUES

I. Whether petitioners filed a timely petition challenging the assessment of sales and use taxes due.

II. Whether petitioners purchases of topsoil, seed, fertilizer and chemicals used to improve and maintain a golf course were exempt from sales and use tax as purchases for resale to club members.

FINDINGS OF FACT

1. On March 17, 1983, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due to petitioner Crag Burn Club, Inc. The Notice assessed sales and use taxes due in the amount of \$28,356.86, plus interest of \$7,099.23, for a total amount due of \$35,456.09. The assessment was premised, in part, upon the finding that the dues and assessments collected were subject to sales and use tax. This portion of the assessment has not been challenged. The portion of the assessment remaining at issue herein was premised upon the determination that sales and use taxes were due upon petitioner's purchases of topsoil, seed, fertilizer and chemicals used to improve and maintain a golf course which petitioners claim were purchased for resale to club members.

2. On June 13, 1983, the petition challenging the foregoing assessment was mailed, via metered mail, to the Tax Appeals Bureau. The petition was received by the Tax Appeals Bureau on June 20, 1983.

3. In the course of the audit, the Audit Division observed that sales tax was paid on purchases of fertilizer.

4. Crag Burn Club, Inc. was a not-for-profit corporation which became insolvent in 1980. In June, 1981, a partnership of approximately thirty individuals, known as Crag Burn Venture, purchased the real and personal property of Crag Burn Club, Inc. Crag Burn Venture in turn executed separate leases, one for real property and one for personal property, to a new not-for-profit corporation known as Crag Burn Golf Club, Inc. Thereafter, Crag Burn Golf Club, Inc. operated the golf club and facilities.

5. During the fiscal year ended October 31, 1979, Crag Burn Club, Inc. spent \$26,479.27 on seed, fertilizer and chemicals and \$2,408.55 on topsoil

purchases. During the year ended October 31, 1980, said petitioner spent \$19,105.90 on seed, fertilizer and chemicals and \$6,042.22 on topsoil purchases. Each of the foregoing purchases included sales tax.

#### CONCLUSIONS OF LAW

A. That section 1138(a)(1) of the Tax Law provides, in part, that a determination of the amount of tax due shall be finally and irrevocably fixed "...unless such person against whom it is assessed, within ninety days after giving of notice of such determination shall apply to the tax commission for a hearing."

B. That Tax Law §1147(a)(2) provides, as follows:

"If any return, claim, statement, notice, application, or other document required to be filed, or any payment required to be made, within a prescribed period or on or before a prescribed date under authority of any provision of this article is, after such period or such date, delivered by United States mail to the tax commission, bureau, office, officer or person with which or with whom such document is required to be filed, or to which or to whom such payment is required to be made, the date of the United States postmark stamped on the envelope shall be deemed to be the date of delivery. This subdivision shall apply only if the postmark date falls within the prescribed period or on or before the prescribed date for the filing of such document, or for making the payment, including any extension granted for such filing or payment, and only if such document or payment was deposited in the mail, postage prepaid, properly addressed to the tax commission, bureau, office, officer or person with which or with whom the document is required to be filed or to which or to whom such payment is required to be made. If any document is sent by United States registered mail, such registration shall be prima facie evidence that such document was delivered to the tax commission, bureau, office, officer or person to which or to whom addressed. To the extent that the tax commission shall prescribe by regulation, certified mail may be used in lieu of registered mail under this section. This subdivision shall apply in the case of postmarks not made by the United States Post Office only if and to the extent provided by regulation of the tax commission." (emphasis supplied).

C. That 20 NYCRR 601.3(c), which discusses the time limitations for the commencement of a proceeding, provides, in part, "Where a machine metered stamp is used on the envelope, the petition shall be deemed filed upon receipt."

D. That since petitioners mailed their petition utilizing metered mail, and since the petition was not received within ninety days of the notice that additional tax was assessed, the petition was untimely filed [Tax Law §1138(a)(1); 20 NYCRR 603.1(c)]. Accordingly, the State Tax Commission renders no determination with respect to the merits of the petition.

E. That the petition of Crag Burn Club, Inc./Crag Burn Golf Club, Inc. is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due, dated March 17, 1983, is sustained.


DATED: Albany, New York

STATE TAX COMMISSION

APR 15 1985

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

P 693 169 735

**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	
Crag Bush Club Inc	
Street and No.	
Crag Bush Club Inc	
P.O., State and ZIP Code	
11, 11th St. Rd.	
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 693 169 736

**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	
Harry E. Blum	
Street and No.	
Sedona, Arizona	
P.O., State and ZIP Code	
135 Sedona Ave	
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	