

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Tonawandas Sportsmen's Club, Inc. : AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Sales & Use Tax :
under Article(s) 28 & 29 of the Tax Law for the :
Period 12/1/79-8/31/82. :
_____:

State of New York :

ss.:

County of Albany :


David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 14th day of November, 1986, he/she served the within notice of Decision by certified mail upon Tonawandas Sportsmen's Club, Inc. the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Tonawandas Sportsmen's Club, Inc.
5657 Killian Rd.
N. Tonawanda, NY 14120

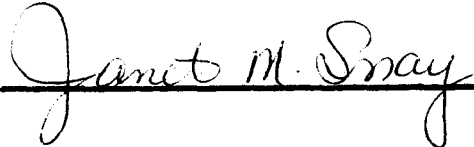
and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

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
14th day of November, 1986.



Authorized to administer oaths
pursuant to Tax Law section 174



STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Tonawandas Sportsmen's Club, Inc. : AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Sales & Use Tax :
under Article(s) 28 & 29 of the Tax Law for the :
Period 12/1/79-8/31/82. :
_____:

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

David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 14th day of November, 1986, he served the within notice of Decision by certified mail upon Jerome D. Adner, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Jerome D. Adner
Jaeckle, Fleischmann & Mugel
425 Woodland Drive
Orchard Park, NY 14127

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
14th day of November, 1986.

David Parchuck
Authorized to administer oaths
pursuant to Tax Law section 174

Janet M. Snay

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

November 14, 1986

Tonawandas Sportsmen's Club, Inc.
5657 Killian Rd.
N. Tonawanda, NY 14120

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
Audit Evaluation Bureau
Assessment Review Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2086

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

Petitioner's Representative:
Jerome D. Adner
Jaeckle, Fleischmann & Mugal
425 Woodland Drive
Orchard Park, NY 14127

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
THE TONAWANDAS SPORTSMEN'S 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 December 1, 1979 :
through August 31, 1982. :
:

Petitioner, The Tonawandas Sportsmen's Club, Inc., 5657 Killian Road, North Tonawanda, New York 14120, filed a petition for revision of a determination or for a refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period December 1, 1979 through August 31, 1982 (File No. 50520).

A hearing was held before James J. Morris, Jr., Hearing Officer, at the offices of the State Tax Commission, State Office Building, 65 Court Street, Buffalo, New York, on January 16, 1986 at 10:45 A.M., with all briefs submitted by July 16, 1986. Petitioner appeared by Jaeckle, Fleischmann & Mugel, Esqs. (Jerome D. Adner, Esq., of counsel). The Audit Division appeared by John P. Dugan, Esq. (Deborah J. Dwyer, Esq., of counsel).

ISSUES

I. Whether the Audit Division's assessment of additional sales and use taxes based upon a test period audit was correct.

II. Whether the Audit Division's determination and assessment of additional sales and use taxes on members' admission fees to participatory sporting events sponsored by the petitioner were correct.

FINDINGS OF FACT

1. On December 12, 1983, the Audit Division issued to petitioner, The Tonawandas Sportsmen's Club, Inc. (hereinafter "Tonawandas"), a Notice of

Determination and Demand for Payment of Sales and Use Taxes Due for the period December 1, 1979 through August 31, 1982 (the "Audit Period"). Said notice assessed tax due in the sum of \$21,204.53 plus interest. Valid consents extending the period of limitation for assessment of sales and use taxes were duly filed, extending the time for determining tax for the Audit Period to December 20, 1983.

2. Tonawandas is a sportsmen's club which provides facilities for trap and skeet shooting, sells ammunition, organizes "shoots" or shooting matches and operates a bar and restaurant.

3. The assessment was the result of an audit by the Audit Division of the business operations of Tonawandas for the Audit Period. It revealed that petitioner had made errors in its expense account records, omitted taxable sales in various categories and failed to pay proper sales tax on capital assets.

4. The Audit Division determined that the records of petitioner, consisting of sales tax returns, a cash receipts journal, a check disbursements journal, purchase invoices and a general ledger, were inadequate because only some purchase invoices were available; there was no substantiation for sales records, and there were no invoices for sales.

5. The Audit Division used a test period method to estimate taxes due. Therefore, a test period, the year ending June 30, 1982, was chosen and a detailed examination of the purchase invoices was conducted. Said examination disclosed \$21,500.00 in purchases on which petitioner failed to pay proper sales taxes at sources. A comparison of additional taxable purchases to total purchases of \$68,306.00 for the test period yielded an error rate of .31602. Said error rate was applied to total purchases and resulted in additional

taxable purchases of \$58,148.33, which translated into unpaid sales tax due on expense purchases of \$4,070.39.

6. Petitioner's records reflected monthly sales figures for the audit period broken down into numerous miscellaneous categories. The only taxable sales reported were the bar and food sales. These were accepted by the Audit Division. However, other taxable categories indicated \$241,521.08 in additional taxable sales which yielded additional tax due of \$16,906.47. Included in these additional taxable categories were members' dues, initiation fees, parties, weddings, timber and members' admission fees to various shooting events. Credits were given for nonmember admissions.

7. The beer and liquor purchases were examined in detail for the month of May 1982 and a markup was computed. However, the audited book markups were substantially similar to petitioner's markups and therefore the petitioner's figures were accepted.

8. Capital asset acquisitions were examined for the entire audit period. It was revealed that sales taxes had not been paid on asset acquisitions of \$3,252.48, yielding additional tax due of \$227.67.

9. The Tonawandas is a federally exempt, not-for-profit corporation and files no returns with the federal government.

10. Testimony revealed that Tonawandas sponsored four different types of trap shooting: registered shooting, Finger Lakes League, house league and practice shooting. Registered shooting consists of matches sponsored and sanctioned by the Amateur Trap Shooting Association. The Finger Lakes League is an interclub league, including six or seven area clubs. The house league is a two-season league with teams drawn from within the club. Practice shooting was not expressly defined in testimony but is assumed to be self-explanatory.

Members and nonmembers participated in all four categories. There was testimony that the admission fees included clay targets, for which there were no separate or itemized charges.

11. The testimony at the hearing established that fees charged to members and nonmembers for participation in the shooting events were identical throughout the audit period.

12. The Department submitted undisputed figures of registered shoot and winter and summer trap league attendance for the years 1981 and 1982. The exhibit breaks down the admissions into member and nonmember participants. The Audit Division relied on these figures to establish taxable admissions.

13. It is Tonawandas' position that the admission fees paid by its members to participate in the "shoots" are nontaxable because of its reliance upon a copy of a letter to the Malone Skeet and Trap Club, Inc., dated December 30, 1966, from Arthur Wasserman, District Tax Supervisor of the Utica District Office, stating that admissions to skeet shooting events were exempt from taxation. Tonawandas also relied upon Sales Tax Bureau "Information Letters Nos. 308-310", dated January 21, 1966, which state that admissions to a skeet shooting facility are nontaxable as a participatory sport.

CONCLUSIONS OF LAW

A. That where, as here, complete, adequate and accurate records are neither maintained nor made available for audit, as required, it is well settled that the Audit Division may resort to a "test period" audit using external indices, in arriving at a reasonably calculated determination of tax liability (Tax Law §§ 1135, 1142.5, 1138[a][1]; Matter of Korba v. New York State Tax Commission, 84 AD2d 655, lv denied 56 NY2d 502.

B. That the Audit Division's choice of accepting the petitioner's unit price method for bar, restaurant and ammunition sales but not assuming same for dues and initiation fees was warranted. The testimony revealed that the club officers did not know that club dues and initiation fees were taxable, and to accept petitioner's assertion that the charges included tax would be unreasonable and contrary to the evidence.

C. That Tonawandas did not present itemized receipts for admissions to shoots and, therefore, the entire fee for admission was subject to tax (Tax Law § 1132[a]; Matter of Hanratty's/732 Amsterdam Tavern v. NYS Tax Commission, 88 AD2d 1028, lv denied 57 NY2d 608, appeal dismissed 57 NY2d 954; Food Concepts, Inc. v. State Tax Commission, AD2d [July 10, 1986]).

D. That the tax on purchases of clay targets was proper since there was no evidence of resale as required for exemption from tax (Tax Law § 1101[b][4]; 20 NYCRR 526.6[c]). Petitioner's assertion of double taxation is in error because there was no evidence the targets were taxed on sale as part of the admission fees.

E. That Tax Law § 1105(f)(2) imposes tax upon "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". Tax Law § 1101(d)(6) defines "dues" as:

"[a]ny 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 (emphasis supplied). (See also 20 NYCRR 527.11[b][2][i] and [ii].)

Petitioner's reliance upon an informal letter from a District Office Sales Tax Supervisor to another taxpayer and "Information Letters" is misplaced. The

meaning and intent of the statute and regulations clearly encompass the annual dues paid to Tonawandas, the initiation fees and the charges for sports privileges like "shoots" (Matter of Mashomack Fish & Game Preserve Club, Inc. and Daniel Daly, Officer, State Tax Commission, June 30, 1986).

F. That the state is not estopped from assessing sales tax on members' admissions to "shoots" by virtue of the informal letter to The Malone Skeet & Trap Club, Inc. or the "Information Letters Nos. 308 - 310". Neither source has the force and effect of the law or regulations in effect during the Audit Period. In fact, the letter opinion was not a formal advisory opinion binding on the Tax Commission with respect to Tonawandas (20 NYCRR 901.4). The "Information Letters" were merely informal interpretations rendered by the Sales Tax Bureau.


G. That the petition of Tonawandas Sportsmen's Club, Inc. is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due dated December 12, 1983 is sustained.

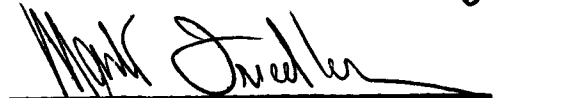
DATED: Albany, New York

STATE TAX COMMISSION

NOV 14 1986


PRESIDENT


COMMISSIONER


COMMISSIONER