

**New York State Department of Taxation and Finance
Office of Counsel
Advisory Opinion Unit**

TSB-A-13(8)S
Sales Tax
February 28, 2013

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S101118B

The Department of Taxation and Finance received a Petition for Advisory Opinion from the [REDACTED]. Petitioner asks whether its membership application fee and dues for business entities and individuals to become and remain members of Petitioner are subject to sales tax.

Based on the facts presented, Petitioner's membership application fee and dues are not dues of a social or athletic club and are not subject to State or local sales tax imposed by section 1105(f)(2) of the Tax Law.

Facts

Petitioner was incorporated in 1935 as an incorporated association and has continuously conducted business as such since that time. The purpose of the association, pursuant to its By-Laws remains unchanged:

Article I, Section 3 - Objects of the Association

The objects of the Association shall be to institute and maintain a method of exchanging and interchanging business information among its members; to create and encourage cooperation, business efficiency and service to its members; to bring its members in touch with business opportunities; to promote a better acquaintance and closer association among its members.

The Petitioner is an independent business development organization whose members consist of entrepreneurs, individual proprietorships, and family-owned businesses that have achieved a certain level of economic success through developing long-term client relationships, word-of-mouth recommendations, and personal and/or professional references. Public companies are welcome to join, although the focus is entirely on developing organic business growth through personal introductions and recommendations rather than short-term sales through more costly methods such as promotional advertising campaigns. The members generate revenue between \$50,000 and several million dollars a year, with average revenue between \$50,000 and \$500,000. In order to limit competition among its individual members, Petitioner offers exclusive memberships in a particular category, e.g. plumber, electrician, florist. Petitioner's By-Laws limit new members to corporations, partnerships, firms, business organizations, or individuals whose main activity, profession, product, or service is not in competition with the main activity, profession, product, or service of another member.

All members are required to follow the membership guidelines set forth in its By-Laws, which include annually attending at least 50% of all regularly scheduled business meetings, reporting to the other members without undue delay all business information that may assist them to acquire additional business (except professional or bank members with confidentiality regulations), and recommending members to friends and other business associates, generally giving fellow members preference in business transactions, and conducting their business in a manner that reflects credit on Petitioner and its members.

Petitioner's goal is to promote business services for its members through word-of-mouth recommendations and the "good will" fostered through long-term business relationships with other business owners. By exposing its members to a process of continual learning, and by exploring each other's respective business, each member can serve as an extended sales force for each other member, thereby exponentially increasing each member's business exposure in targeted niche markets.

Petitioner hosts business development lunch meetings four times per month. It also hosts an annual golf outing, holiday party and several open houses, on a rotating basis at a member business. At meetings, members are expected to, among other things, report leads received from fellow members, offer "Thank You's" to any member who referred business to it, present a "30 Second Commercial" once monthly about its business and any special pricing or offers being made to its fellow members and, biannually give an educational 15-20 minute talk about its business to keep its fellow members informed of its current business offerings.

Petitioner charges an application fee of \$300.00 which is refunded to an applicant if it is not invited to join. Quarterly dues of \$300.00 are billed to each member and, at the present time, the Petitioner is collecting Sales Tax on said sums. The members of the Association anticipate a reasonable return on their investment, and Petitioner believes that a majority of its members realize a multiple return on their dues. The dues are claimed by all members as a tax deductible business expense.

Petitioner does not own or rent any buildings, offices, or other facilities. Nor does it own, rent, or have the use of any sporting facilities. Petitioner's members' dues cover membership and support Petitioner and luncheon meeting costs. That is, Petitioner pays for member's meals at its various meetings and events, though members may pay an extra charge at certain special events. Petitioner's By-Laws do not restrict alcoholic beverages at its events, though alcohol is usually not served. Petitioner also provided a copy of its By-Law of May, 2010, which provides that Petitioner's members propose prospects for new membership. Petitioner's membership committee considers nominations and any objections thereto and makes a final recommendation to Petitioner's Board of Directors, which then approves the new member or not.

Analysis

Section 1105(f)(2) of the Tax Law imposes sales tax on dues paid to any social or athletic club in this state. "Dues" means 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. "Social or athletic club" means any club or organization of which a material purpose or activity is social or athletic. Tax Law, section 1101(d)(6) and (13).

Sales Tax Regulations section 527.11 (b)(5) defines "club or organization" as any entity which is composed of persons associated for a common objective or common activities. Whether the organization is a membership corporation or association, a business corporation, or other legal type of organization is not relevant. Significant factors, any one of which may indicate that an entity is a club or organization, are: an organizational structure under which the membership controls social activities, elections, committees, participation in the selection of members and management of the club or organization, or possession by the members of a proprietary interest in the organization. The organizational structure may be formal or informal. If the members of a "club" maintain an advisory committee to make suggestions to the "club" owner, but the owner is not obligated to accept any of the suggestions and the members do not control any aspects of the "club's" activities, then the entity is not a club or organization. But if the members of a club maintain an advisory committee and the management of the club is obligated to accept the decisions of the advisory committee, then the members do control the entity's activities and it is a club or organization. Furthermore, if a person must be sponsored by a member of the club before the person can become a member, then the entity is a club, even if the management of the club reserves the right to admit the new member, because members have joint control with management over admission of new members.

Regulations section 527.11 (b)(6) defines "social club" to mean a club or organization which has a material purpose or activity of arranging periodic dances, dinners, meetings or other functions affording its members an opportunity of congregating for social interrelationship. For example, a club that is organized for the purpose of educating its members in science, literature, and art is not a social club, even though it holds an annual dinner dance.

Petitioner is an association of member business firms and individuals. Petitioner's By-Laws provide that the objects of the association are to exchange business information among its members, create and encourage cooperation, business efficiency, and service to its members, bring its members in touch with business opportunities, and promote better acquaintance and closer association among its members. Petitioner restricts its membership to one entity or proprietor from each of any business type. Petitioner's membership, either directly or through its officers or board of directors, all of whom are members, controls admission to Petitioner and its activities. No other entity has an ownership interest in Petitioner. Therefore, Petitioner is a club. Because Petitioner does not convey or possess any sport privileges or facilities, it is not an athletic club.

Petitioner's main activities consist of weekly lunch and other meetings at which its members can further their business interests in accord with the association's objectives. Petitioner is not engaged primarily in affording its members an opportunity to congregate for

social interaction. Rather, the material purpose of the club is to promote its members' businesses by offering them a networking forum. Compelling facts supporting this conclusion are the requirements that Petitioner imposes on its members. Members are required to attend a minimum number of meetings. When they attend meetings, members are required to describe their own business and the business leads/introductions that they seek. In addition, members must provide business leads to other members. In sum, businesses pay Petitioner to become members primarily to avail themselves of the business promotional opportunities that membership in Petitioner provides. Thus, Petitioner does not constitute a social club for purposes of sales tax, and its application fee and dues are not dues of a social club and are not subject to sales tax. *See, e. g.*, TSB-A-10(26)S.

DATED: February 28, 2013

/S/

DEBORAH R. LIEBMAN
Deputy Counsel

NOTE: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.