

New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Technical Services Division

TSB-A-01(23)S
Sales Tax
July 31, 2001

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S001128A

On November 28, 2000, the Department of Taxation and Finance received a Petition for Advisory Opinion from Sea Tow Services International, Inc., P. O. Box 1178 Southold, New York 11971-0958.

The issue raised by Petitioner, Sea Tow International, Inc., is whether the membership fees charged by it are considered a sale of tangible personal property or services, or whether they are not subject to tax.

Petitioner submits the following facts as the basis for this Advisory Opinion.

Petitioner is the world's largest professional marine assistance organization with over 350 U.S. Coast Guard licensed captains on call 24 hours a day, 7 days a week, to serve its members.

Petitioner is primarily a membership organization for recreational boaters. Modeled after the Automobile Club of America, Petitioner has developed as "Your Road Service at Sea®." Each member pays an annual membership fee of \$95 to belong and then is entitled to membership privileges. Members enjoy the following privileges:

- Free on-the-water assistance when their boat becomes disabled.
- Enrollment in Petitioner's Advantage Network, that provides discounts for tangible personal property and services at over 1,700 marine related companies nationwide.
- Navigational assistance while on their boat.
- Sea and weather condition reports.
- Radio communication checks.
- Tidal information.
- Boat buying referrals.
- A free subscription to the member magazine, "Lifelines."

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- Direct access to Sea Tow licensees in their area for information relating to boating dockage and service providers in their area.

Approximately 10% to 15% of its members actually require on-the-water assistance in any given year, yet all members receive access to all privileges whether they use them or not. Members do not control any activities of Petitioner's organization, participate in the selection of members or the management of Petitioner's organization, or possess any proprietary interest in Petitioner.

Petitioner promotes boating safety to its members and to the general public through its sponsorship of boating education programs, and teaches boating safety classes along with the United States Power Squadron. Petitioner also maintains an active Web site that promotes and educates boating safety to the general public.

Applicable Law

Section 1105(a) of the Tax Law imposes a tax on "[t]he receipts from every retail sale of tangible personal property, except as otherwise provided in this article."

Section 1105(c) of the Tax Law imposes sales tax upon receipts from the sales, except sales for resale, of certain enumerated services.

Section 1105(f)(2)(i) of the Tax Law imposes sales tax upon the following:

The 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. Where the tax on dues applies to any such social or athletic club, the tax shall be paid by all members, other than honorary members, thereof regardless of the amount of their dues, and shall be paid on all dues or initiation fees for a period commencing on or after August first, nineteen hundred sixty-five. . . .

Opinion

Petitioner is a membership organization modeled after the Automobile Club of America. Petitioner's members pay \$95 to belong. Petitioner offers, free of charge, a number of services including on-the-water assistance, navigational assistance, radio checks, tidal information, boat buying referrals, and a free subscription to the member magazine, "Lifelines."

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Petitioner's membership fee is not a charge for an enumerated taxable service or for the sale of tangible personal property. Petitioner is not a social or athletic club for purposes of Section 1105(f)(2) of the Tax Law. Its membership fees, accordingly, are not club dues subject to tax under Section 1105(f)(2). Thus, Petitioner's membership fee is not subject to sales tax. However, Petitioner is required to pay sales or use tax on its purchases of any taxable services or tangible personal property used in providing its members with their privileges.

DATED: July 31, 2001

/s/
Jonathan Pessen
Tax Regulations Specialist III
Technical Services Division

NOTE: The opinions expressed in Advisory Opinions are limited to the facts set forth therein.