

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

TSB-A-10(26)S
Sales Tax
June 21, 2010

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S091006A

On October 6, 2009, the Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED]. Petitioner asks whether membership dues it charges for business development services are subject to sales tax. Petitioner is not operating a social or athletic club; therefore, its membership fees are not subject to sales tax.

Facts

Petitioner is an independent business development organization whose members mostly 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. Although public companies are welcome to join, the focus is on developing organic business growth through personal introductions and recommendations rather than techniques usually employed by large-scale corporations that often seek to stimulate short-term sales through more costly methods such as promotional advertising campaigns. The members generate revenue between 3 to 100 million dollars a year; average revenue is \$5 to \$10 million.

Most members have experienced growth in their business and continue to believe that they can grow their business most effectively by marketing themselves as being more prompt and responsive, efficient, dependable, and trustworthy than their competitors and paying a particularly high level of attention to their clients' individual needs. This type of marketing is especially effective through word-of-mouth recommendations. Petitioner's business philosophy is that, by exposing its members to a process of continual learning and 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.

In order to achieve this type of cohesion among its members, Petitioner hosts business development lunch meetings three times per month at the Harvard Club. It also hosts an evening networking reception three times a year, an annual golf outing, and a holiday party. These meetings are run on a very tight schedule. Each member is expected to complete a certain amount of "homework" prior to the meeting: (1) preparation of a three to five minute description of the member's business and how it distinguishes itself from its competitors; (2) a description of one or two specific leads/contacts or individual introductions that the member is looking for; and (3) a description of one or two specific business leads that the member can offer to the other members or an offer to make a personal introduction(s) to potential business clients in specific markets (for example, a

member that sells medical supplies to hospitals may offer to make an introduction to a specific hospital administrator that could benefit a member in the business of selling professional uniforms). Petitioner submitted a copy of its Format and Structure outline given to members to assist them in preparing for the meetings.

At meetings, cross-marketing is developed on two different levels. At the first level, members engage in cross-marketing efforts at the individual tables during lunch. Approximately eight members are seated at each table and the table chairpersons, who are selected by Petitioner's Table Chair Committee, are responsible for keeping the discussions on track and moving from member to member. Contact information is exchanged where members make useful business connections at the table. At the second level, introductions and exchanges occur at the floor level. Each member at the meeting is afforded the opportunity to introduce the member's business to the group as a whole, to submit requests for business leads or introductions to the room, and to provide leads that may be useful to other members. Petitioner submitted a copy of a sample meeting agenda.

In order to limit competition among its individual members, Petitioner offers two types of memberships. The first is an exclusive membership pursuant to which the member will represent the sole business in a particular category, e.g., boutique hotel design or restaurant equipment supply. The second type of membership is an open membership, in which case there may be a maximum of two companies in the same category. Exclusive members are required to attend at least 50% of the business development meetings and open members are required to attend a minimum of one meeting per quarter. Petitioner submitted a copy of its "Guide for New Member Candidates."

Petitioner's by-laws impose the following obligations on members:

1. report to other members, without undue delay, all business information that may assist other members to acquire additional business;
2. mention and recommend to friends and business associates, at all suitable times, the merits of various association members;
3. act promptly on all business leads received from members;
4. file periodic reports with Petitioner's Executive Director as to all business received from fellow members;
5. notify a fellow member when a lead provided by a member results in a business transaction;
6. transact all business referred by a member in manner that reflects positively upon the fellow member and the association;
7. familiarize themselves with various businesses represented by the association for purposes of making as many recommendations of fellow members' businesses as circumstances permit.

Petitioner charges a \$1,200 application fee (to be refunded if the applicant is not invited to join), a onetime fee of \$750 upon full acceptance, and quarterly dues of \$950 for the first year and \$1,200 thereafter. Petitioner believes that members join its organization with the expectation of

earning a multiple return on their dues, which they view as an investment. Petitioner's members have reported a return on investment (i.e., revenue generated) in the range of two to forty times their annual dues, with the average return being ten times annual dues.

All members claim membership dues as a tax deductible business expense.

Analysis

Section 1105(f)(2)(i) of the Tax Law imposes sales tax on 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. Tax Law section 1101(d)(6) defines "dues" as any dues or membership fee including any assessment, irrespective of the purpose for which made. Tax Law section 1101(d)(13) defines "social or athletic club" as any club or organization of which a material purpose or activity is social or athletic. Sales tax regulation section 527.11(b)(5)(i) defines "club or organization" as follows:

The phrase *club or organization* means any entity which is composed of persons associated for a common objective or common activities. Whether the organization is a membership corporation or association or 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 or athletic activities, tournaments, dances, 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.

Regulation section 527.11(b)(6) defines "social club" as any club or organization which has a material purpose or activity of maintaining quarters for arranging periodic dances, dinners, meetings, or other functions affording its members an opportunity of congregating for social interrelation.

The test of taxability is not whether a club has any social features at all, but whether or not such activities, viewed in the light of all the circumstances of its existence, including the declared purpose of the organization as shown by its constitution and by-laws (if their provisions are enforced), provide the real reason for its existence and enable it to secure members and retain them. Another way to put the issue is whether the social features of the club involved are merely incidental or, on the other hand, are a material purpose of the organization. *Union League Club of Chicago v. United States*, *supra*. [Ct. Cl., 4 F. Supp. 929 [1933 CCH ¶9576].

While Petitioner's organization is a club or organization, as that term is defined in the sales tax regulations, it does not constitute a social club for purposes of sales tax. Petitioner is not engaged primarily in affording its members an opportunity of congregating for social interrelation. Rather, the material purpose of the club is to promote the businesses of the members by offering a networking forum for them. The most compelling facts supporting this conclusion are the requirements that

Petitioner imposes on members. Members are required to attend a minimum number of meetings. When they attend meetings, members are required to describe their business and business leads/introductions they are seeking. In addition, members must provide business leads to other members. In sum, businesses pay Petitioner to become members in its organization solely in order avail themselves of the business promotional opportunities that Petitioner provides.

DATED: June 21, 2010

/S/

Jonathan Pessen
Director of Advisory Opinions
Office of 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.