

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

TSB-A-10(36)S
Sales Tax
August 10, 2010

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S100413A

On April 13, 2010, the Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED] (Petitioner), [REDACTED]. Petitioner asks whether the payments that he makes to the [REDACTED] (yacht club) pertaining to the mooring of a boat are subject to sales tax.

We conclude that these payments are subject to sales tax under Tax Law section 1105(f)(2) because the yacht club is a social or athletic club, Petitioner is a member of the club, and the amounts paid by Petitioner for mooring are dues.

Facts

Petitioner is a member of the [REDACTED] (yacht club). According to the yacht club's constitution and bylaws, the objective of the club is the advancement, promotion and encouragement of boating and social enjoyment. The club's board of directors is responsible for the government and management of the club. All officers of the club, who are elected annually by members, sit as directors on the board. The members directly elect the non-officers members of the board. Club members have the right to amend the bylaws and overturn decisions made by the board of directors. New members are nominated by current members and must be approved by the board of directors. The board has the right to expel members who are delinquent in the payment of dues and fees.

The yacht club's facilities include docking space, a swimming pool, and a building that contains showers and space for club meetings. The second floor of the building is rented to a business that operates a restaurant on the premises. The restaurant has a single entrance, which is open to the public, i.e. club members do not have special access to the restaurant. The club sponsors golf outings and barbecues and has a license from the State Liquor Authority to dispense wine and beer at club functions.

The yacht club has a reciprocity agreement with other yacht clubs on the Hudson River that permits [REDACTED] (yacht club) members to dock their boats at other clubs' facilities without charge.

All yacht club members pay dues. Club members are entitled to a slip for a designated mooring space at the club for a designated boat. Members who use a mooring slip at the club must pay the following fees:

- (a) "marine rent," which is based on the size of the mooring slip used by the member;
- (b) "water-light fee," which is a charge for maintaining the common area in the marina area of the club and includes an allocated non-metered cost for the consumption of electricity in the common area;
- (c) "appliance, stove, refrigerator, A/C and associates fees," which is a charge for an allocated non-metered estimated cost of the consumption of electricity by the member at his or her slip;

- (d) "TIG" (Taxes, Insurance and Grounds), which are charges related to the common mooring area;
- (e) "cable tv," which is a fixed non-optional fee for yearly use of cable tv service at a slip;
- (f) personal water craft space rental, which is a charge for the storage in a designated area of the marina's waters of small crafts such as dinghies and jet skis.

Analysis

Tax Law § 1105(f)(2) imposes sales tax on dues paid to any social or athletic club. Section 527.11(b)(5)(i) of the Sales Tax Regulations defines "club" 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.

The regulations go on to provide that a club or organization does not exist merely because it restricts the size of the membership solely because of the physical size of the facility but any other type of restriction may be viewed as an attempt at exclusivity. 20 NYCRR 527.11(b)(5)(ii)(b).

The [REDACTED] (yacht club) is a club for purposes of sales tax imposed on dues. It is an organization composed of persons who associate for a common objective or common activities. Members of the club control elections of officers and directors, and participate in the selection of new members and management of the club.

Section 527.11(b)(6)(i) of the Sales Tax Regulations 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."

Section 527.11(b)(7)(i) of the Sales Tax Regulations defines "athletic club" as "any club or organization which has as a material purpose or activity the practice, participation in or promotion of any sports or athletics."

The [REDACTED] (yacht club) is a social or athletic club for purposes of the sales tax imposed on dues. It is a social club because its bylaws declare that the objective of the club is the advancement, promotion and encouragement of boating and social enjoyment. In addition, the club provides members with communal amenities such as use of a swimming pool. *See Merrick Estates Civic Ass'n, Inc. v. State Tax Commission*, 65 A.D.2d 669, (1978). The organization is also an athletic club because it promotes yachting and aquatic sports (e.g., use of jet skis).

Tax Law § 1101(d)(6) defines "dues" as "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...."

The Sales Tax Regulations set forth examples of charges that are considered dues within the meaning of the statute. Example 6 in 20 NYCRR 527.11(b) provides as follows:

A club organized and operated for the promotion of yachting and other aquatic sports, which is a social and athletic club, owns and maintains docking and mooring facilities for the use of its members. The club makes a charge to each member using its facilities. The amount of the charge depends upon the size of the member's boat and the location of the docking and mooring facilities used. The charges made by the club for these facilities constitute taxable dues or membership fees.

The Tax Appeals Tribunal, relying in part on this example in the regulation, has held that mooring charges billed by a yacht club to members were subject to sales tax as dues. *Matter of the Petition of Youngstown Yacht Club, Inc.*, December 11, 1997, DTA No. 813503. Further, dues can encompass utility charges. *Petition for Advisory Opinion from Hamlet Golf and Country Club, Inc.*, Adv Op Comm T&F, January 7, 2008, TSB-A-08(2)S. Accordingly, all fees billed by the yacht club to Petitioner and other members who use mooring space at the club are dues subject to sales tax under Tax Law section 1105(f)(2).

DATED: August 10, 2010

/S/

Jonathan Pessen
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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.