

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

TSB-A-14(31)S
Sales Tax
August 26, 2014

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S131021B

The Department of Taxation and Finance received a Petition for an Advisory Opinion from [REDACTED]. Petitioner requests guidance on whether initiation fees, annual dues and general assessments billed to club members are subject to sales and use tax if Petitioner amends its by-laws to remove its exclusivity of membership clause.

We conclude that Petitioner's proposed changes to its membership policy would not affect Petitioner's status as a "club" or "organization" for sales tax purposes under Tax Law § 1105(f)(2) because its membership would continue to retain control over the use of the facilities. Therefore, even if Petitioner makes the proposed changes to its membership policy, the initiation fees, annual dues and general assessments paid to Petitioner still would be subject to sales and use tax.

Facts

Petitioner is a not-for-profit organization exempt from Federal taxation pursuant to Internal Revenue Code § 501(c)(7) and is the sole owner and operator of [REDACTED], which provides its members use of a golf course, clubhouse, restaurant, and bar facilities. The Board of Directors exercises control over the use of the facilities. The Board consists solely of club members and club membership is mandatory for election to the Board. Club membership is currently granted by a vote of the Board of Directors. Pursuant to Article 1.6(C) of the Petitioner's by-laws: "No person shall be admitted to any classification of membership until an application shall be approved by the Board of Directors or such committee to which the Board may delegate such power. The Board of Directors is authorized to establish such requirements for the recommendation and investigation of new applicants as it shall deem necessary and in the best interest of [Petitioner]." Petitioner concedes that it is currently a "social or athletic club" within the meaning of Tax Law § 1105(f)(2); therefore, sales tax is imposed on amounts billed to members for initiation fees, annual dues, and general assessments.

Petitioner proposes to amend its by-laws to remove the requirement of Board of Directors approval for membership and to accept membership from the general public on a first-come, first-served basis. Under the proposed by-laws, the Board of Directors will reserve the right to restrict membership based solely upon the size of the facilities and the possibility of overcrowding. Although Petitioner will use the terms "club" and "member" in its marketing, Petitioner will not restrict its membership by geographic area, income, race, religion, or any other means. Petitioner seeks guidance as to whether elimination of the restricted membership clause would exclude Petitioner from classification as a "social or athletic club" pursuant to

§1105(f)(2), thereby not subjecting member billings for initiation fees, annual dues, and general assessments to state and local sales tax.

Analysis

Tax Law § 1105(f)(2) imposes sales tax on the dues and initiation fees paid to any “social or athletic club.” Tax Law § 1101(d)(6) defines “dues” as any “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 are otherwise exempt if paid directly by such guests.” Sales and Use Tax Regulation § 527.11 (b)(5) defines a “club or organization” as “any entity which is composed of persons associated for a common objective or common activities. 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.”

In *Antlers Country Club, Inc.*, the Tax Appeals Tribunal (November 19, 1992) held that an entity was not a “club” because the entity’s stockholders retained both control and property interest over the entity, and not all stockholders were members of the club. Here, the Board of Directors exercises control over the use of the facilities, and each director is required to be a member of the club. This would not change under Petitioner’s proposed amendments to its by-laws. Therefore, since the club members, through the “members only” Board of Directors, would retain control over the club’s activities and management, Petitioner would remain a “club” under Tax Law § 1105(f)(2), regardless of whether it implements its proposed membership changes.

In light of the foregoing, we determine Petitioner would continue to be subject to sales and use tax on its initiation fees, annual dues and general assessments.

DATED: August 26, 2014

/S/

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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.