

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED] (the Club). The Club asks whether its membership dues are subject to sales tax. We conclude that the Club's membership dues are subject to sales tax under Tax Law § 1105(f)(2).

Facts

The Club is a for-profit entity owned by member-stockholders and organized to promote golf. There are no athletic activities other than golf and there are limited social activities. The Club owns a building that is used as a combination pro shop, club storage, and cart storage facility. The pro shop business is owned and operated by the Club golf professional, who is also an employee of the Club and runs the day-to-day operations of the golf course. The Club owns a building that houses a restaurant and dining facility that is leased to an individual who operates the restaurant as a separate business entity. Club members are encouraged to support both the pro shop and restaurant, but are under no obligation to do so. The Club is open to outside play but nonmembers are limited to eight rounds per year, except that there are two public leagues that would allow nonmembers to exceed the eight rounds limit. The course is open from April 1st until November 20th - weather permitting.

The Club sells several golf memberships that afford members differing levels of access to the facilities. The initiation fees and dues for membership vary. There are no restrictions on who may become a member and the membership options are as follows:

1. Full membership

Full members pay the full dues rate applicable to their age. The dues of an active annual full member exceed ten dollars per year. These members can vote and run for the Board of Directors. They are required to purchase a share of stock for \$100. They have unlimited playing privileges, unlimited use of the range, and can make tee time reservations two weeks in advance. Full members are also allowed to designate a second person as an associate member. This is a buy one/get one free deal. There is no additional charge for the associate membership. There are a few lifetime members that are full members who paid a one-time fee of \$10,000 in exchange for membership for life.

2. Associate membership

Associate members are members who have been so designated by a full member. Associate members pay no dues, they cannot vote for or be elected to the Board of Directors, and they cannot own stock. Otherwise there are no additional restrictions on associate members. They have unlimited playing privileges, unlimited use of the range, and can make tee time reservations two weeks in advance. Membership as an associate is limited to three years.

3. Intro membership

Intro members are new members who receive a reduced rate that increases each year until full membership is attained. The dues of an active annual intro member exceed ten dollars per year. They have unlimited playing privileges, unlimited use of the range, and can make tee time reservations two weeks in advance. Intro members cannot vote for or be elected to the Board of Directors and are not permitted to own stock.

4. Social membership

These members are allowed two free rounds of golf with a cart, unlimited range privileges, and a member's charge account. Social members cannot vote for or be elected to the Board of Directors. A stock purchase is not required, although some social members who were previously playing members do own stock.

5. Weekend membership

These members have unlimited playing privileges on Saturdays and Sundays after 11:00AM, as well as unlimited range privileges. Weekend members cannot vote for or be elected to the Board of Directors and are not permitted to own stock.

All members (other than social members) are entitled to purchase club storage, as well as use of the handicapping system. All members (other than social and weekend members) are required to use at least 20 carts per season. Unused carts are billed to the member at the end of the season. All members have a charge account that can be used to charge carts and pro shop purchases. There is no monthly assessment for restaurant services. The restaurant owner has established separate charge accounts for members who want a charge account for restaurant and bar purchases.

Responsibility for the operation of the Club rests solely with the Board of Directors and the various member-comprised committees established by the Board. These responsibilities include: hiring and supervising department heads, establishing membership categories, setting dues and initiation fees, establishing the rules governing the use of the golf course, approving outside (nonmember) play, maintaining the buildings owned by the Club, purchasing machinery, and establishing the rent paid by the restaurant lessee and monitoring compliance with conditions of the lease.

The Board is made up of 13 full members who are elected for three-year terms by the eligible member-stockholders. Members of the Board who serve three consecutive terms are not eligible for reelection in the tenth year, but may be reelected after not serving for a year. Members of the Board elect a president, vice president, secretary, and treasurer who must be members of the Board.

Analysis

Tax Law § 1105(f)(2) imposes sales tax on all dues paid to any social or athletic club if the dues of an annual active member are greater than ten dollars, exclusive of any initiation fee, and on any initiation fee in excess of ten dollars regardless of the amount of the dues. A social or athletic club

is “[a]ny club or organization of which a material purpose or activity is social or athletic.” Tax Law § 1101(d)(13). Dues are 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 would otherwise be exempt if paid directly by such guests.” Tax Law § 1101(d)(6).

20 NYCRR 527.11(b)(5) defines a club or organization:

[A]ny 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.

The Club is a private for-profit entity organized for social and athletic purposes: to promote golf. It is member-owned and member-managed through its Board of Directors even though not all classes of members can own stock and run or vote for the Board of Directors. Member-stockholders have a proprietary interest in the Club and only member-stockholders can run and vote for the Board of Directors. *Compare Antlers Country Club*, Tax Appeals Tribunal, November 19, 1992, (deciding that an entity was not a club within the meaning of 20 NYCRR 527.11 because the activities were controlled by the stockholders and not all stockholders were members).

Accordingly, the Club is a social or athletic club within the meaning of 20 NYCRR 527.11(b)(5) and for purposes of Tax Law § 1105(f)(2). Because the dues of an annual active member are greater than ten dollars, all charges for dues, initiation fees, and assessments are subject to tax.

DATED: February 3, 2020

/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.