

**New York State Department of Taxation and Finance**  
**Taxpayer Services Division**  
**Technical Services Bureau**

TSB-A-82(35)S  
Sales Tax  
October 7, 1982

STATE OF NEW YORK  
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S820222A

On February 22, 1982 a Petition for Advisory Opinion was received from Steuben Place-Recreational Corp., c/o Urbach, Kahn & Werlin, 66 State Street, Albany, New York 12207.

The issues raised are (1) whether the Petitioner constitutes a social or athletic club, within the meaning of section 1105(f)(2) of the Tax Law, and (2) whether fees charged by Petitioner as "membership fees," "club dues", and for various services are subject to sales tax.

Petitioner operates a facility which promotes a program of individual health fitness, as well as providing for social and athletic activities. Participants in the program are given an initial screening, a medical examination and medical tests to determine their degree of fitness prior to commencing an exercise program. The participants have access to adult fitness classes, aerobic classes, a Nautilus conditioning program, a swimming pool and other athletic facilities, including a gymnasium, racquetball courts, volleyball and badminton courts, and a running track. Petitioner will also operate a bar and facilities for dining, and such facilities will be available for use by the public.

Applicants for membership pay an initial membership fee and, in addition, select one of several monthly "club dues" options. Members enjoy varying privileges in relation to the dues option selected. Rental lockers are available, as is also net bag laundry service. Guests, who will be admitted only if accompanied by a member, will be charged a fee for the use of the athletic facilities and the locker room, with an additional fee for use of the courts.

Section 1105(f)(2) of the Tax Law imposes a tax on ". . . 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 . . . ." The term "dues" is defined in section 1101(d)(6) of the Tax Law as including ". . . any assessment, irrespective of the purpose for which made . . . ." Section 1101(d)(13) of the Tax Law defines the term "social or athletic club" to mean any ". . . club or organization of which a material purpose or activity is social or athletic." The Sales and Use Tax Regulations define the phrase "club or organization" to mean: ". . . 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 organization structure under which the membership controls social or athletic activities, tournaments, dances, elections, committees, participation in the selection of members and

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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." 20 NYCRR 527.11(b)(5).

Petitioner states with respect to the foregoing that: ". . . the membership does not control the social or athletic activities; tournaments, dances, elections, or committees. The membership does not participate in the selection of members and management. The members do not possess a proprietary interest in the corporation." It follows therefrom that Petitioner is not a "club or organization," within the meaning of the regulation provision quoted above and, thus, is not a "social or athletic club," within the meaning of section 1105(f)(2) of the Tax Law. Accordingly, the "membership fees" and "club dues" charged by Petitioner do not constitute "dues paid to any social or athletic club," and are thus not subject to tax.

As to Petitioner's other charges, the following applies. Petitioner's charges for locker rental are subject to tax pursuant to section 1105(c)(4) of the Tax Law, which imposes a tax on receipts from the service of "storing all tangible personal property not held for sale in the regular course of business. . . ." Charges for net bag laundry service are not subject to tax, inasmuch as receipts from the service of laundry are excluded from the tax on receipts from the service of "maintaining, servicing or repairing tangible personal property." Tax Law, § 1105(c)(3)(ii). Receipts from the operation of the restaurant and bar/lounge are subject to tax under section 1105(d)(1) of the Tax Law, which imposes a tax on receipts from the sale of food and drink. Receipts from admissions to social activities such as dances are subject to tax under section 1105(f)(1) of the Tax Law, which imposes a tax on admissions to places of amusement. 20 NYCRR 527.10(e)(2)(d). However, guest fees paid for the use of Petitioner's athletic facilities and for court time are excluded from the operation of such tax. 20 NYCRR 527.10(d)(4).

DATED: September 21, 1982

s/LOUIS ETLINGER  
Deputy Director  
Technical Services Bureau