

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

TSB-A-84(7)S
Sales Tax
March 8, 1984

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S831019A

On October 19, 1983 a Petition for Advisory Opinion was received from the Willows Country Club, Riverview Road, Rexford, New York 12148.

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

Petitioner owns and operates a country club which provides its members with the use of a golf course, tennis courts, outdoor swimming facilities and a clubhouse. The clubhouse contains locker room, restaurant and banquet facilities. These facilities are available not only to members but to the general public as well, for banquets, golf tournaments and other events.

Petitioner offers its memberships to the general public, on a first-come, first-served basis, and all members enjoy identical privileges. Members have no control over any club activities, do not participate in the management of the club and have no proprietary interest in the club.

Section 1105(f)(2) of the Tax Law imposes a 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 . . ." The term "club" is defined as:

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 . . . 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.

- (ii) A club . . . does not exist merely because a business entity:
 - (a) charges for the use of facilities on an annual or seasonal basis, even if an annual or season pass is the only method of sale and provided such passes are sold on a first-come, first-served basis;
 - (b) restricts the size of the membership solely because of the physical size of the facility. Any other type of restriction may be viewed as an attempt at exclusivity;

TSB-A-84(7)S
Sales Tax
March 8, 1984

- (c) uses the word club or member as a marketing device;
- (d) offers tournaments, leagues and social activities which are controlled solely by the management
...

Example 18: A club owned by an individual which attempts to restrict its membership by geographic area, income, race, religion or any other means, is a club However, a "club" owned by an individual which restricts its membership only because of the physical capacity of its facilities is not a club or organization. 20 NYCRR 527.11(b)(5)

Accordingly, inasmuch as (1) the membership of Petitioner's club possess no proprietary rights therein and have no control over its activities or management, and (2) membership in the club is not exclusive, with memberships available on a first-come, first-served basis, the subject club is not a "social or athletic club" within the meaning of section 1105(f)(2) of the Tax Law. Annual membership "fees" or "dues" are thus not subject to tax imposed under such statutory provision.

DATED: February 17, 1984

s/Frank J. Puccia
Director
Technical Services Bureau