

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

TSB-A-85(38)S
Sales Tax
August 28, 1985

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S850131A

On January 31, 1985, a Petition for Advisory Opinion was received from Park Country Club of Buffalo, Inc., 4949 Sheridan Dr., Williamsville, New York 14221.

The issue raised is whether the portion of club members' monthly gratuity charge paid to employees is subject to State and local sales and use tax imposed under Articles 28 and 29 of the Tax Law.

Petitioner is a country club. The club's members do not acquire a proprietary interest in the club. However, the members exercise control over the selection the club's management and exercise control of the clubs activities through member committees. Additionally, club members nominate all new members and control the selection of new members.

Monthly statements issued to club members include a separately stated charge for gratuities. Such charges are paid to club employees at the rate of ten percent of total a la carte restaurant and bar sales. The gratuity charges collected from members are not paid over in total to employees.

Section 1105(f)(2) of the Tax Law imposes a tax on "the dues paid to any social or athletic club in this state."

Section 1101(d)(13) of the Tax Law defines the term "social or athletic club" as "any club or organization of which a material purpose or activity is social or athletic."

Section 527.11(b)(5)(1) of the Sales and Use Tax Regulations provide that:

"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."

Since the membership controls the club's activities, membership and management, Park Country Club is a "social or athletic club" within the meaning of section 1105(f)(2) of the Tax Law. Any dues paid by members, therefore, are subject to tax.

Section 1101(d)(6) of the Tax Law defines dues as:

"any dues or membership fee including any assessment, irrespective of the purpose for which made. . ." (Emphasis supplied).

Petitioner's club requires a fixed monthly gratuity fee from each member. Since this charge must be paid for the privilege of being a club member, it constitutes taxable dues or membership fees.

Petitioner asks whether the portion of the gratuity fee paid to employees is exempt from tax, referring to the provisions of regulation section 527.8(1). This section provides that receipts from the sale of food and drink are subject to tax unless:

- "(i) the charge is separately stated on the bill or invoice given to the customer; and
- (ii) the charge is specifically designated as a gratuity, and
- (iii) all such monies received are paid over in total to employees."

The provisions of regulation section 527.8(1) are applicable only to the tax imposed on the sale of food and drink under section 1105(d) of the Tax Law. Inasmuch as they are so limited, they do not apply to the tax on dues imposed under section 1105(f)(2) of the Tax Law. Accordingly, Petitioner is required to collect tax on the separately stated monthly charge for gratuities.

It should be noted, however, that Petitioner does not satisfy the criteria for exemption stated in section 527.8(1) in any event. Although the charges are separately stated and specifically designated as a gratuity, the revenues received are not paid over in total to employees.

DATED: August 12, 1985

s/FRANK J. PUCCIA
Director
Technical Services Bureau

NOTE: The opinions expressed in Advisory Opinions are limited to the facts set forth herein.