

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

TSB-A-85(9)S  
Sales Tax  
May 20, 1985

STATE OF NEW YORK  
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S831116A

On November 16, 1983 a Petition for Advisory Opinion was received from International Business Machines Corporation, Old Orchard Road, Armonk, New York 10504.

The issue raised is whether IBM Country Clubs are social or athletic clubs within the meaning and intent of Section 1105(f)(2) of the Tax Law.

Petitioner owns and operates three country clubs in New York State. Each club has a club house with conference rooms, golf course, tennis, basketball and handball courts and a swimming pool. Each club also conducts dinner dances. The clubs collect sales tax on admission charges for dances, the price of meals, golf cart rentals and pro-shop sales. Sales tax is also added to the fees charged for the use of athletic facilities, such as the golf course, the swimming pool, and the tennis courts.

Membership and use of the club facilities is limited to past and current employees of IBM and their families. Upon payment of an annual fee employees can become "yearly members," which status entitles them to reduced green fees and tennis court rental charges. In 1983 this membership fee was two dollars.

All clubs are located on Petitioners property, the nature of activities held at the clubs is determined solely by Petitioner, and club members have no proprietary interest in the clubs.

Section 527.11(b)(5) of the sales and use tax regulations defines the phrase "club or organization" as:

(i) . . . 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, or 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 or organization does not exist merely because a business entity:

. . .

(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;

. . .

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 or organization. . . ."

Sales and Use Tax Regulations Section 527.11(b) further defines:

"(6) Social Club. A social club is any club or organization which has a material purpose or activity of arranging periodic dances, dinners, meetings or other functions affording its members an opportunity of congregating for social interrelationship.

(7) Athletic Club. (i) An athletic club is any club or organization which has as a material purpose or activity the practice, participation in or promotion of any sports or athletics."

Inasmuch as each IBM Country Club restricts its membership to employees of the IBM Corporation, the same constitutes a "club or organization" within the meaning of the statute. Since each country club provides both entertainment and sports facilities it is a "social or athletic club."

Section 1101(d) of the Tax Law defines

"(6) Dues. Any dues or 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."

It follows from the foregoing that all of the charges made by Petitioner's clubs for its members' use of social or sports privileges and facilities constitute "dues" within the meaning of the law.

Section 1105(f) of the Tax Law imposes a tax on "(2) The dues paid to any social or athletic club in this state if the dues of an active annual member . . . are in excess of ten dollars per year, . . . . Where the tax on dues applies to any . . . social or athletic club, the tax shall be paid by all members thereof . . . regardless of the amount of their dues, and shall be paid on all dues . . . ."

Sales and use tax regulations section 527.11 provides the following interpretation:

(a) "Imposition. (3) . . .

TSB-A-85(9)S  
Sales Tax  
May 20, 1985

Example 1: A social club maintains two types of memberships. Full memberships are \$15 per year and limited memberships are \$5 per year. Since the dues paid by the full members are in excess of \$10 per year, all members' dues are taxable even though some are not more than \$10.

(b) Definitions. (2) Dues. (i) . . .

Example 5: A social club collects \$10 per year from each of its members as regular dues. Members are entitled to use the clubhouse facilities without payment of an additional charge. However, members who wish to use the golf course may do so only upon payment of an additional charge. Since the golf course is a social or athletic club facility, any charge made by the club to a member for the use of the course constitutes dues. The fact that such charges are made upon the members' election to use the course is immaterial."

Accordingly, if any member of an IBM Country Club is charged for "dues" in excess of ten dollars per year, then all "dues" payments to the club are taxable.

DATED: April 30, 1985

FRANK J. PUCCIA  
Director  
Technical Services Bureau

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