

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

TB-A-87(21)S
Sales Tax
May 14, 1987

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S861015A

On October 15, 1986, a Petition for Advisory Opinion was received from Donald B. Schwartz, 944 The Parkway, Mamaroneck, New York 10543.

The issue raised is whether amounts charged for certain services and facilities offered by an establishment called a "health club" are taxable either under Section 1105(f)(1) or (2) of the Tax Law.

Petitioner states that the health club offers solely aerobic exercise classes and the use of workout machines to dues-paying members. Showers are available, but no swimming pool is provided.

The members do not participate in the management of the health club or in the organization of any of its activities.

Section 1105(f) of the Tax Law imposes taxes on:

(1) Any admission charge . . . to or for the use of any place of amusement in the state . . . except charges to a patron for admission to, or use of, facilities for sporting activities in which such patron is to be a participant

(2) 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

Section 1101(d)(13) of the Tax Law defines the term "social or athletic club" to mean "[a]ny club or organization of which a material purpose or activity is social or athletic."

Section 527.11(b)(5) of the Sales and Use Tax Regulations provides, in part, as follows:

(5). . .(i) 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.

(ii) A club or organization 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 serve 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;

(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.

Section 527.11(b)(7) of the Sales and Use Tax Regulations provides, in part, as follows:

(7). . . (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.

* * *

(ii) [The phrase "athletic activities"] does not include exercising or calisthenics solely for health or weight reduction purposes, as contrasted to sports. An establishment that merely provides steam baths, saunas, rowing machines, shaking machines and other exercise equipment shall not be considered an athletic club. . . .

It appears from the facts presented in the Petition, that the members do not join the health club to engage in "athletic activities" as the term is defined in the Sales and Use Tax Regulations. Moreover, they have neither a proprietary interest in the enterprise nor a right to control its operation. They are mere customers of a business establishment which, therefore, does not meet the criteria of a "club or organization" or "social or athletic club" contained in Regulation 527.11(b)(5) and (b)(7), quoted above. Accordingly, the members' payments for participation in exercise classes and use of workout machines do not constitute "dues" subject to tax under Section 1105(f)(2) of the Tax Law; neither are they taxable admission charges pursuant to Tax Law 1105(f)(1).

It should be noted that the City of New York imposes a four-percent local sales tax on every sale of services by weight control salons, health salons, gymnasiums, Turkish baths, sauna baths and similar establishments, and on every charge for the use of such facilities. Tax Law 1212-A(b)(1).

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However, inasmuch as Petitioner's health club is located in Westchester County, it would not be subject to tax under section 1212-A(b)(1) of the Tax Law.

DATED: May 14, 1987

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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