

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

TSB-A-90(59)S
Sales Tax
December 19, 1990

STATE OF NEW YORK

COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S901106A

On November 6, 1990, a Petition for Advisory Opinion was received from Nassau County Club, St. Andrews Lane, Glen Cove, New York 11542.

The issue raised by the Petitioner, Nassau Country Club, is whether the issuance of bonds to its members to finance capital improvements constitutes dues and, therefore, is subject to State and local sales and use tax imposed under Articles 28 and 29 of the Tax Law.

Petitioner, a not-for-profit corporation, has issued a non-interest bearing bond in the amount of one thousand dollars to each current full (golf and tennis) member. Other bonds, in lesser face amounts, have been issued to all other members. Each member is required to purchase a bond as a condition for continued membership in Petitioner.

The bonds are evidenced by certificates which have been issued to each member in connection with the contribution actually made by them. The bonds will bear no interest, and will be redeemed by Petitioner when the member terminates his or her membership for any reason (or at such earlier time if Petitioner chooses). The proceeds of the bonds will be used for financing capital improvements to Petitioner's facilities, and were issued in lieu of obtaining a loan from other sources.

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)(6) of the Tax Law defines "dues" as:

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.

Section 527.11(b)(2)(i) of the Sales and Use Tax Regulations provides, in pertinent part, the following:

- (2) Dues. (i) The term dues includes:
- (a) any dues or membership fee;
 - (b) any assessment, irrespective of the purpose for which made; and

(c) any charge for social or sports privileges or facilities.

* * *

Example 4: A social club wishes to expand its clubhouse by adding a new dining room to it. In order to finance the construction, the club will assess each member \$100. The assessment is subject to tax as dues, regardless of the fact that the proceeds will be used for a capital improvement.
(emphasis added)

Further, 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)(i) of the Sales and Use Tax Regulations provides 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."

Petitioner is a social or athletic club as defined in Section 1101(d)(13) of the Tax Law and Section 527.11(b)(5)(i) of the Sales and Use Tax Regulations and therefore is required to collect sales tax on any dues paid to it in accordance with Section 1105(f)(2) of the Tax Law. The bonds issued by it to its members for the purpose of financing capital improvements constitute dues upon which sales tax must be collected in accordance with the meaning and intent of Section

TSB-A-90(59)S
Sales Tax
December 19, 1990

1101(d)(6) of the Tax Law and Section 527.11(b)(2)(i) of the Sales and Use Tax Regulations. Port Jervis Country Club, Inc., Dec St Tx Comm, September 28, 1979, TSB-H-79(110)S.

DATED: December 19, 1990

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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