

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

TSB-A-93 (56) S
Sales Tax
October 18, 1993

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S930709A

On July 9, 1993, a Petition for Advisory Opinion was received from I.H.C.C. Inc., 700 Veterans Memorial Highway, Hauppauge, N.Y 11788.

The issue raised by Petitioner, I.H.C.C. Inc., is whether initiation fees, dues, and driving range fees paid to it are subject to sales tax.

Petitioner is the owner and operator of a tract of land located on Breeze Hill Road, Northport, New York, which is utilized as a golf course facility. It commenced its operations as a golf course on January 1, 1993. For marketing purposes only, the entire operation is referred to as a "country club" and the right to play golf is referred to as a "membership."

All operating decisions are made by Petitioner.

In exchange for payment of a membership fee, the members receive a right to play golf at no additional cost. In exchange for the payment of an initiation fee the annual membership dues are less. The initiation fee is non-refundable.

Members are charged an additional amount for use of the driving range as a separately stated charge.

Club members have no authority over any activities or management. The members have a board of governors that act solely in an advisory capacity. Its function is to serve as a means of communication between the members and management. All decisions are made solely by management.

All tournaments and social activities of the club are purely at the discretion of management.

All decisions limiting the use of the course resulting from adverse weather conditions and maintenance rest with management.

All course design changes and modifications rest with management.

The club members have no direct or indirect proprietary interest in management or the petitioner.

The club members have no say about who may become a member of the club.

Membership is limited to 300 members and is offered to the general public on a first come, first served basis, without regard to race, religion, and/or residence. The only reason for the limitation of membership is that the Petitioner has determined that 300 members is the maximum physical capacity of the facility.

As a condition of membership, each prospective member is required to execute a written membership agreement which will set forth the member's rights and obligations with respect to the club.

The terms "membership" and "club" are utilized by the Petitioner purely as a marketing device. A membership merely entitles the member the use of the facilities on an annual basis.

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 "

Section 527.11(b)(5) of the Sales and Use Tax Regulations defines the term "club or organization" as follows:

(5) Club or organization. (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-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.

(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 or organization". 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.

In Brierwood Village, Inc., Adv Op Comm T&F, February 13, 1989, TSB-A-89(6)S, the Commissioner advised that inasmuch as (1) the membership of the club possessed no proprietary rights therein and had no control over its activities or management and (2) membership in the club was not exclusive, with members being appointed and accepted from a waiting list maintained by Petitioner, the subject club was not a "social or athletic club" within the meaning of section 1105(f)(2) of the Tax Law. Annual membership "fees" or "dues" were thus not subject to the imposition of sales tax.

Accordingly, pursuant to Section 1105(f)(2) of the Tax Law, Section 527.11(b)(5) of the Sales and Use Tax Regulations and Brierwood Village, Inc., supra, since membership is not exclusive, members possess no proprietary interest in Petitioner and have no control over its activities or management, and the term "club" and "member" are used solely as a marketing device, Petitioner, is not a social and athletic club and, therefore, membership dues, initiation fees and driving range fees paid by members are not subject to State and local sales taxes.

DATED: October 18, 1993

/s/
PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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