

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

TSB-A-94 (48)S
Sales Tax
October 18, 1994

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S940811B

On August 11, 1994 a Petition for Advisory Opinion was received from Hudson National Golf Club, Inc., 71 Arch Street, Greenwich, Connecticut 06830.

The issue raised by Petitioner, Hudson National Golf Club, Inc., is whether the sales tax on dues paid to any social or athletic club imposed by Section 1105(f)(2) of the Tax Law becomes due on membership subscriptions currently being raised by Petitioner.

Petitioner is a New York not-for-profit corporation organized to finance and construct a golf club and 18-hole golf course (the "Club") in the Village of Croton-on-Hudson in Westchester County, New York. The total capital required to purchase the Club property, design and construct the Club and provide operating capital is approximately \$26,300,000.

The Club does not presently exist and no athletic, dining or other facilities are currently available to purchasers of membership interests. If fundraising and construction proceed according to current plans, the Club will open to members during the summer of 1996.

Petitioner is authorized to issue an aggregate of 370 membership interests divided into two classes. The first class of 10 memberships has full voting rights and the second class of 360 memberships ("General Memberships") has only limited rights to vote as a class for the election of a minority of the members of Petitioner's board of directors and on certain major transactions. Once the Club has been constructed, holders of General Memberships will have rights to use all Club facilities. After issuance of the General Memberships, no new members will be admitted unless there is a vacancy caused by the death, resignation or default of a current member. It is expected that vacancies will be filled only by persons who have been recommended by current Club members.

Petitioner is currently offering a minimum of a 40 and a maximum of 65 General Memberships at \$75,000 per Membership. The proceeds of this offering will be used to acquire the land on which the Club will be built, begin construction of the golf course and club house facilities, pay for infrastructure and road development and pay golf course and club house designers. The proceeds of this offering (estimated to be \$3 million to 4.8 million) will not be sufficient to finish construction of the Club.

After completion of the preceding offering, Petitioner plans to offer 185 to 220 additional General Memberships at \$100,000 or more per membership, the proceeds of which will be used to complete the construction of the Club. These funds (estimated to be 17.8 million to 20.2 million) will be used to construct greens, complete course grading, install irrigation equipment, lay sod, complete the clubhouse and driving range, and complete infrastructure development. In lieu of selling this number of General Memberships, Petitioner may seek to raise financing through borrowing. Only after these funds have been raised and applied to finish construction will the Club be a useable athletic facility.

Once the Club is operating, Petitioner expect that annual membership dues in excess of ten dollars will be assessed on all General Memberships to pay annual operating expenses.

Section 1105(f)(2) of the Tax Law imposes sales tax upon "[T]he dues paid to any social or athletic club in this state if the dues of an active member, exclusive of the initiation fee, are in excess of ten dollars per year, and on the initiation fee alone, regardless of the amount of dues, if such initiation fee is in excess of ten dollars...".

Section 1101(d)(7) of the Tax Law defines "Initiation fee", for the purposes of Section 1105(f)(2) of the Tax Law as "[A]ny payment, contribution, or loan, required as a condition precedent to membership, whether or not such payment, contribution or loan is evidenced by a certificate of interest or indebtedness or share of stock, and irrespective of the person or organization, to whom paid, contributed or loaned."

Section 527.11(b)(4) of the Sales and Use Tax Regulations states:

(4) Initiation fee. Any payment, contribution or loan, required as a condition precedent to membership whether or not such payment, contribution or loan is evidenced by a certificate of interest or indebtedness or share of stock, and irrespective of the person or organization to whom paid, contributed or loaned.

Example 12: As a condition necessary for membership in a social club, an applicant is required to purchase a \$50 bond from the club. This purchase is an initiation fee subject to tax.

In the instant case the payment made for a General Membership constitutes the payment of an initiation fee in accordance with the meaning and intent of Section 1101(d)(7) of the Tax Law and Section 527.11(b)(4) of the Sales and Use Tax Regulations. The fact that the facilities of the club are not open and available for use by the members at the time the members make the payment for a General Membership does not change the character of the payment, since an initiation fee is merely any payment required as a condition precedent to membership in the club. There is no requirement in the law or regulations that a physical plant has to exist in order for the payment for the membership to be considered an initiation fee.

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Accordingly, sales of General Memberships by Petitioner prior to the construction of the club facilities are subject to the sales tax imposed by Section 1105(f)(2) of the Tax Law.

DATED: October 18, 1994

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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