

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

TSB-A-94 (9)S
Sales Tax
March 10, 1994

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S940105A

On January 5, 1994, a Petition for Advisory Opinion was received from Mount Vernon Shooting Center, Inc., 172-4 Gramatan Avenue, Mount Vernon, New York 10550.

The issues raised by Petitioner, Mount Vernon Shooting Center, Inc., are whether fees paid to Petitioner for membership in Petitioner and for firearm safety courses offered by Petitioner are subject to sales and use taxes.

Petitioner is the owner and operator of a pistol range. For the payment of an annual fee, members are entitled to unlimited use of Petitioner's indoor pistol range for one year. All members are eligible to use the indoor pistol range and to participate in firearm safety courses offered by Petitioner. Membership is not restricted and is available to the general public. In addition, the membership of Petitioner possess no proprietary rights in Petitioner and have no control over its activities and management. Petitioner does not engage in any social activities.

Petitioner provides a firearm safety course which assists individuals in obtaining pistol permits and/or developing skills in handling firearms for recreation, home protection and/or employment. The course is given by a certified NRA instructor and follows the guidelines of the NRA Firearms Safety Course. Individuals are shown range safety, shoot selected firearms for instructors and must demonstrate that he or she qualifies in the safe handling of a handgun. At the individual's option, he or she can further his or her skills, during his or her annual period, by continuing to use the range, which maintains a NRA instructor on the premises acting as a range officer.

The firearm safety course may be purchased separately from membership in Petitioner. However, participants in the safety course who subsequently join Petitioner are given a credit for the fee paid for the safety course.

Section 1105(c) of the Tax Law imposes tax upon the receipts from every sale, except for resale, of certain enumerated services. The providing by Petitioner of a firearm safety course is not one of the services enumerated under Section 1105(c) of the Tax Law and, therefore, such service is not subject to sales and use taxes.

Section 1105(f)(2) of the Tax Law imposes sales tax upon the following:

(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, and on the initiation fee alone, regardless of the amount of dues, if such initiation fee is in excess of ten dollars...

Section 527.11(b)(5) of the Sales and Use Tax Regulations provides, in part, 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 control 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.

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Example 13: A tennis "club" which is owned by an individual provides tennis courts, showers, a sauna and lockers. "Members" pay a seasonal fee to play tennis at a certain time weekly. The "club" provides no other services and has a daily rate for non-members who may use a court when there is free time. This "club" is not a "club or organization".

Example 14: A tennis "club" which is owned by an individual provides tennis courts, showers, a sauna and lockers. Members pay a seasonal fee to play tennis, any time during the season, without limitation. The club provides no other services and has a daily rate for non-members. Since the "club" does not restrict playing to members only and the "club" provides nothing but playing time for its members, charges are for season tickets to play tennis and not for the payment of dues. Therefore, this is not a "club or organization".

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In Manhattan Plaza Associates, Adv Op St Tx Comm, August 31, 1983, TSB-A-83(34)S the Tax Commission held that a owner/operated health club which made available facilities for its members and their guests, where membership was open to the public, the club carried on no social or athletic events, tournaments or dances, members possessed no proprietary interest in the club and had no control over either club membership or club activities was not a "club or organization" but members in reality were mere customers of a business entity. Therefore, payments made to club did not constitute "dues" subject to tax under Section 1105(f)(2) of the Tax Law.

Accordingly, in the instant case since members in Petitioner possess no proprietary rights in Petitioner and have no control over its activities or management, membership in Petitioner is not restricted, but rather is open to the public and Petitioner does not engage in any social activities, pursuant to Section 527.11(b)(5) of the Sales and Use Tax Regulations and Manhattan Plaza Associates, supra, Petitioner is not a "social or athletic club" within the meaning of Section 1105(f)(2) of the Tax Law. Moreover, the providing of a firearm safety course is not an enumerated service subject to sales tax pursuant to Section 1105(c) of the Tax Law. Therefore, fees paid to Petitioner by individuals for membership in Petitioner and for the firearm safety course are not subject to sales and use taxes.

DATED: March 10, 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.