

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

TSB-A-96 (86) S
Sales Tax
December 30, 1996

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO.S961002A

On October 2, 1996, a Petition for Advisory Opinion was received from The Antler's at Diamond Point Homeowners Association, Inc. c/o Nathaniel H. Daffner, CPA, 740 Union Street, Schenectady, New York 12305.

The issue raised by Petitioner, The Antler's at Diamond Point Homeowners Association, Inc., is whether any portion of the monthly homeowners association fee will be subject to sales tax when Petitioner acquires a swimming pool and tennis courts.

Petitioner submits the following facts.

Petitioner is a not-for-profit homeowners association formed to own, operate and maintain association property. Membership is limited to purchasers and subsequent owners of homes who automatically become members of the association. The homes of association members are located in a defined area. Petitioner charges its homeowner membership a monthly fee for maintenance of the area (lawn care, snowplowing, etc.). A portion of the monthly fee is put into a reserve for the purchase of capital items. The developer of the complex will be relinquishing title to the swimming pool and tennis courts located on the complex to the homeowners association. These facilities will be used by the resident members of the homeowners association and their guests.

Section 1105(f)(2) of the Tax Law imposes a tax on:

(i) 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 .

(ii) Dues and initiation fees paid to the following shall not be subject to the tax imposed by this paragraph:

(A) A fraternal society, order or association operating under the lodge system;

(B) Any fraternal association of students of a college or university;

(C) A homeowners association. For purposes of this subparagraph, a homeowners association is an association (including a cooperative housing or apartment corporation) (I) the membership of which is comprised exclusively of owners or residents of residential dwelling units, including owners of units in a condominium,

and including shareholders in a cooperative housing or apartment corporation. where such units are located in a defined geographical area such as a housing development or subdivision and (II) which operates social or athletic facilities located in such area for use (whether or not exclusive) by such owners or residents. (Emphasis added.)

Section 527.11 of the Sales and Use Tax Regulations provides:

(b) Definitions. As used in this section, the following terms shall mean:

* * *

(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.

In this case, Petitioner is a not-for-profit homeowners association formed to own, operate and maintain association property. Membership is limited to purchasers and subsequent owners of homes who automatically become members of the association. Residences in the homeowners association are located in a defined area. Petitioner charges its homeowner membership a monthly fee for maintenance of the area (lawn care, snowplowing, etc.). A portion of the monthly fee is put into a reserve for the purchase of capital items. Petitioner will be accepting ownership of the swimming pool and tennis courts from the developer. The swimming pool and tennis court facilities will be available for use by Petitioner's membership and their guests. Accordingly, the monthly fees charged to Petitioner's membership fall within the exclusion from sales tax under Section 1105(f)(2)(ii)(C) of the Tax Law, which became effective December 1, 1995.

DATED: December 30, 1996

/s/
JOHN W. BARTLETT
Deputy Director
Technical Services Bureau

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