

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

TSB-A-97(47)S  
Sales Tax

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S970513C

On May 13, 1997, a Petition for Advisory Opinion was received from Mount Kisco Country Club, Inc., 10 Taylor Road, Mount Kisco, New York 10549.

The issue raised by Petitioner, Mount Kisco Country Club, Inc., is whether an assessment charged to members of a country club for the construction of a tunnel which results in a capital improvement, and is built specifically for the safety of the members, is subject to sales tax.

Petitioner submits the following facts.

Petitioner is a not-for-profit organization exempt from Federal taxation pursuant to Section 501(c)(7) of the Internal Revenue Code. Petitioner and its subsidiary, Mount Kisco Country Club Realty Corporation, own and operate a country club which provides its members with the use of an 115 acre golf course, a clubhouse, tennis and paddle courts, a swimming pool, and a restaurant and bar. The 1st and 18th holes on the golf course are separated from the rest of the course by Route 117, a New York State highway. Previously, golfers playing the course had to either walk or drive their golf carts across the highway twice during the course of playing a round of golf.

Petitioner became increasingly concerned about the safety of its members and their guests due to the increased traffic on the highway. Petitioner approached the appropriate authorities seeking solutions for improving this hazardous condition. Numerous alternatives were pursued with the respective authorities from simply installing a traffic light to building a bridge, some more cost effective than others, all of which were rejected. Finally, the more ambitious alternative of constructing a tunnel under the highway was approved. Faced with no other alternative, in 1995 the members of Petitioner voted in favor of moving forward with this project. Petitioner entered into a contract with a construction company to construct the tunnel for an initial cost of \$450,000. The State, under its permit, granted Petitioner a right of way to construct the tunnel under the highway with title to such capital improvement belonging to the State. Furthermore, cancellation of the permit would require Petitioner to remove the improvement and restore the right of way to its original condition. At the end of 1996, the construction of the tunnel was substantially completed.

Petitioner concedes it is a social or athletic club within the meaning of Section 1105(f)(2) of the Tax Law. Therefore, sales tax is imposed on amounts billed to members for initiation fees, annual dues and general assessments. The assessment for construction of the tunnel was billed to the members separately, and was earmarked solely for expenditures on the tunnel. The funds collected for the tunnel were not commingled with other general assessments.

Applicable Law and Regulations

Section 1101(d) of the Tax Law provides, in part:

When used in this article for purposes of the tax imposed under subdivision (f) of section eleven hundred five, the following terms shall mean:

\* \* \*

(6) 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 1105(f) (2) (i) of the Tax Law imposes sales 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, and on the initiation fee alone, regardless of the amount of dues, if such initiation fee is in excess of ten dollars. Where the tax on dues applies to any such social or athletic club, the tax shall be paid by all members, other than honorary members, thereof regardless of the amount of their dues....

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

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) assessment, irrespective of the purpose for which made; and
- (c) any charge for social or sports privileges or facilities. (emphasis added)

\* \* \*

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.

Opinion

Petitioner states it is a social or athletic club for purposes of Section 1105(f)(2) of the Tax Law. Dues, as defined in section 1101(d)(6) of the Tax Law and Section 527.11(b)(2) of the Sales and Use Tax Regulations, include any assessment, irrespective of the purpose for which such charge was made, to members of a social or athletic club, and are taxable if in excess of ten dollars per year. In this case, Petitioner was concerned for the safety of its members crossing a busy road, that separates one part of the golf course from the other part of the course. Although the tunnel is a capital improvement, the assessment for this project still constitutes dues. See Nassau Country Club, Adv Op Comm T&F, December 19, 1990, TSB-A-90(59)S.

Accordingly, the assessments issued to members of Petitioner are subject to sales tax under Section 1105(f)(2) of the Tax Law.

DATED: July 23, 1997

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

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