

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

TSB-A-99(27)S
Sales Tax
May 19, 1999

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S990222A

On February 22, 1999, the Department of Taxation and Finance received a Petition for Advisory Opinion from Skaneateles Country Club, Inc., West Lake Road, Skaneateles, New York 13152. Petitioner, Skaneateles Country Club, Inc., furnished additional information with respect to the Petition on March 10, 1999.

The issue raised by Petitioner is whether dues paid by its members are subject to sales tax under Section 1105(f)(2) of the Tax Law.

Petitioner submits the following facts as the basis for this Advisory Opinion.

Petitioner is a not-for-profit corporation created under the former Membership Corporations Law for the purpose of establishing and maintaining a golf links, tennis grounds and other lawful amusements. Petitioner is exempt from Federal income tax under Section 501(c)(7) of the Internal Revenue Code. Petitioner operates pursuant to a constitution and by-laws duly adopted by Petitioner and its members. Petitioner submitted a copy of its constitution and by-laws, which are the source of the information below.

Petitioner has Full Memberships and Associate Memberships. Full Memberships are limited to 300 persons, unless changed by a majority vote of the Board of Directors. Full Members and, for the most part, Associate Members are entitled to vote, hold office and share in the ownership of Petitioner. A person must have written recommendations from current members in order to apply for membership to the membership committee.

The Board of Directors of Petitioner consists of eight directors who are elected by the membership entitled to vote at the annual meeting of the membership, as well as one director nominated and appointed from a particular category of Associate Memberships. Full Memberships have one vote and Associate Memberships have a one-half vote. The Board of Directors is responsible for the care and management of the property and directs the affairs of Petitioner, and has the power and authority to make rules and regulations, consistent with the by-laws, as may be necessary to conduct the affairs of Petitioner. If a vacancy arises within the Board of Directors, the Board may elect any member of Petitioner eligible to hold elective office to fill the vacancy.

The Board elects a President, Vice-President, Secretary and Treasurer. The President, subject to a majority vote of the Board of Directors, appoints members of Petitioner to committees to assist in the operations of Petitioner. Such committees include a membership committee, a food and beverage committee, and an entertainment committee.

TSB-A-99(27)S
Sales Tax
May 19, 1999

Authorization for the dissolution of Petitioner may only be made by an affirmative two-thirds vote of the membership in attendance at a special meeting called for this purpose. Upon the dissolution of Petitioner or distribution of its assets, all persons who hold Full or Associate Membership at the record date and who have paid the required initiation fee and all other indebtedness to Petitioner will be entitled to a full share of the net assets to be distributed.

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:

* * *

(13) Social or athletic club. Any club or organization of which a material purpose or activity is social or athletic.

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

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:

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.

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TSB-A-99(27)S
Sales Tax
May 19, 1999

Example 16: A club organized as a Type A not-for-profit corporation as described in section 201(b) of the Not-For-Profit Corporation Law (i.e., civic, patriotic, political, social, fraternal, athletic, agricultural, horticultural, animal husbandry, and for a professional, commercial, industrial, trade or service association) is a "club or organization" and its dues may be subject to sales tax.

Example 17: A club that is organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder and is exempt from Federal income tax under section 501(c)(7) of the Internal Revenue Code is a "club or organization" and its dues may be subject to sales tax.

Opinion

Petitioner is a club or organization as described under Section 527.11(b)(5) of the Sales and Use Tax Regulations since it has an organizational structure whereby the members elect the Board of Directors, members participate on committees, participate in the selection of members and have a proprietary interest in the assets of Petitioner upon its dissolution. It should be noted that as a not-for-profit corporation established under the former Membership Corporations Law, Petitioner is similar to a Type A not-for-profit corporation under Section 201(b) of the Not-For-Profit Corporation Law which is considered a "club or organization" in Example 16 of Section 527.11(b) of the Sales and Use Tax Regulations. Given the recreational purposes for which Petitioner was formed, Petitioner is a social or athletic club for purposes of Section 1105(f)(2)(i) of the Tax Law. Therefore, the dues paid by members for membership in Petitioner are subject to sales tax under Section 1105(f)(2)(i).

DATED: May 19, 1999

/s/
John W. Bartlett
Deputy Director
Technical Services Bureau

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