

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

TSB-H-80 (146) S
Sales Tax
August 11, 1980

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S800226A

On February 26, 1980, a Petition for Advisory Opinion was received from Kermis Club, Inc., Box 1072, Schenectady, NY 12301.

The issue raised is whether the Kermis Club must collect sales tax from its members on admission tickets purchased by the club for the members.

The Kermis Club is exempt from Federal income tax under section 501(c)(4) of the Internal Revenue Code as a local association of employees.

The Kermis Club is a non-profit organization whose membership is limited to employees of the General Electric Company Knolls Atomic Power Laboratory. All employees automatically become members of the club when they come to work at the laboratory and no dues are charged for membership.

The club is strictly a social organization, and its activities consist of organizing approximately one social function each month. Some of the functions involve the purchase of a block of tickets for events such as a play or admission to an amusement park. The tickets are then resold to members at actual cost. For several years the Club has been computing the total amount collected from members for tickets, and then paying New York sales tax on this amount.

Section 1101(d)(1) of the Tax Law defines an active annual member to be "A member who is not a life member but who enjoys full club privileges as distinguished from the privileges enjoyed by a person holding a nonresident membership, an associate membership, or other partial or restricted membership."

Section 1101(d)(6) defines dues to be "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...."

Section 1101(d)(13) defines a social or athletic club to be "Any club or organization of which a material purpose or activity is social or athletic."

Section 1105(f) imposes a tax on "(1) Any admission charge where such admission charge is in excess of ten cents to or for the use of any place of amusement in the state, except charges for admission to race tracks, boxing, sparring or wrestling matches or exhibitions which charges are taxed under any other law of this state, or dramatic or musical arts performances, or motion picture theaters, and except charges to a patron for admissions to, or use of, facilities for sporting activities in which such patron is to be a participant, such as bowling alleys and swimming pools...."

(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 ... Where the tax on dues applies to any such social or athletic club, the tax shall be paid by all members ... thereof regardless of the amount of their dues, and shall be paid on all dues"

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Since the amounts received by the Kermis Club do not come within the definition of dues described in section 1105(f) of the Tax Law, the Kermis Club is deemed to be acting only as a conduit between its members and the vendors of admission tickets.

Accordingly, the Kermis Club is not required to collect tax on the amount received from its members.

Dated: July 15, 1980

s/ LOUIS ETLINGER
Deputy Director
Technical Services Bureau