

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

TSB-H-80 (259) S
Sales Tax
December 28, 1980

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S801001A

On August 1, 1980 a Petition for Advisory Opinion was received from Mr. Lawrence Wittlin, 1144 Franklin Avenue, Garden City, New York 11530.

The issues raised are whether State and local sales taxes, which are imposed under Articles 28 and 29 of the Tax Law, are due on the purchase of a Certificate of Membership plus a Subordinate Debenture Bond at a member-owned golf club, and, if sales tax is due on the bond, is it refundable if Petitioner subsequently leaves the club and redeems the bond.

Petitioner joined the Muttontown Golf and Country Club and received a bill showing charges for a Certificate of Membership and a Subordinate Debenture Bond, plus sales tax. The non-interest bearing bond is redeemable if Petitioner should leave the club.

Section 1105(f) (2) of the Tax Law, contained in Article 28, imposes a 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...."

Section 527.11(b) (3) of the Sales and Use Tax Regulations defines the term initiation fee as: "Any payment, contribution, or loan, required as a condition precedent to membership, whether or not such payment, contribution or loan is evidenced by a certificate of interest or indebtedness or share of stock, and irrespective of the person or organization to whom paid, contributed or loaned." 20 NYCRR 527.11(b) (3)

Since the Certificate of Membership and the Subordinate Debenture Bond are payments or loans required as a condition precedent to membership in the Muttontown Golf and Country Club, both are subject to sales tax. Subsequent redemption of the bond will not entitle Petitioner to a refund of the tax paid, because the transaction that necessitated the purchase of the bond and created Petitioner's tax liability has not been set aside or cancelled.

DATED: December 15, 1980

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau

JAMES H. TULLY, JR., COMMISSIONER LOUIS M. JACOBSON, DEPUTY COMMISSIONER
FRANK J. PUCCIA, DIRECTOR