

New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Technical Services Division

TSB-A-04(13)S
Sales Tax
May 24, 2004

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S030702A

On July 2, 2003, the Department of Taxation and Finance received a Petition for Advisory Opinion from Old Chatham Hunt Club, Inc., P.O. Box 93 Old Chatham, NY 12136.

The issue raised by Petitioner, Old Chatham Hunt Club, Inc., is whether dues paid by its members are dues or initiation fees paid to a rod or gun club which are not subject to sales tax.

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

Petitioner was chartered as a not-for-profit corporation in 1953 and is governed by its membership. The club maintains a trap range for shooting and promotes hunting on horseback with fox hounds and beagles in the British tradition, but does not sponsor fishing. In addition to the trap range, the club maintains a beagle kennel and a fox hound kennel. It has no facilities for the social or athletic activities of its members and does not sell meals or provide services traditionally associated with social or athletic clubs.

The members pay dues, fees and assessments as established by Petitioner's Bylaws for the use of its facilities and to participate in the club hunts.

Petitioner's Bylaws provide, in part:

Article II. (1) The object and purpose of this corporation shall be to foster hunting with fox hounds and beagles, and trap shooting.

Applicable law and regulations

Section 1105(f) of the Tax Law imposes sales tax, in part, on:

(2)(i) The dues paid to any social or athletic club in this state if the dues . . . 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) of the Sales and Use Tax Regulations provides, in part, the following definitions of terms that are contained in section 1105(f)(2) of the Tax Law:

(5) 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 controls 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. (Emphasis supplied)

(ii) A *club or organization* does not exist merely because a business entity:

(a) charges for the use of facilities on an annual or seasonal basis, even if an annual or season pass is the only method of sale and provided such passes are sold on a first-come, first-served basis;

(b) restricts the size of the membership solely because of the physical size of the facility. Any other type of restriction may be viewed as an attempt at exclusivity;

(c) uses the word *club* or *member* as a marketing device;

(d) offers tournaments, leagues and social activities which are controlled solely by the management.

* * *

(7) Athletic club. (i) An *athletic club* is any club or organization which has as a material purpose or activity the practice, participation in or promotion of any sports or athletics.

Technical Services Bureau Memorandum, entitled *Dues and Initiation Fees Paid to Rod or Gun Clubs No Longer Subject to Sales Taxes*, December 23, 1996, TSB-M-96(16)S, provides in part:

Effective for membership periods beginning on or after October 1, 1996, dues and initiation fees paid by members to rod or gun clubs (e.g., fishing and hunting clubs) are no longer subject to the New York State and local sales taxes. These taxes were imposed under sections 1105(f)(2), 1107 and 1109 of Article 28 and pursuant to the authority of Article 29 of the Tax Law. The Tax Department has examined its longstanding policy concerning the taxability of dues and initiation fees paid to these clubs and has determined that such policy should be revised.

Opinion

Petitioner is a nonprofit corporation which is governed by its membership. Petitioner's object and purpose is to foster hunting with fox hounds and beagles, and trap shooting. The members pay

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dues, fees and assessments as established by Petitioner's Bylaws for the use of its facilities and to participate in the club hunts.

Petitioner is a member owned corporation created for the purpose of fostering hunting with fox hounds and beagles, and trap shooting. Based upon its stated purposes as reflected in its corporate charter and Bylaws, its activities, and its actual operation as represented in this Advisory Opinion, Petitioner is a hunting club, or rod or gun club, within the meaning of TSB-M-96(16)S, *supra*. Therefore, the membership dues or fees paid by its members are not subject to the tax imposed by section 1105(f) of the Tax Law. See TSB-M-96(16)S, *supra*.

DATED: May 24, 2004

/s/
Jonathan Pessen
Tax Regulations Specialist IV
Technical Services Division

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