

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

TSB-A-06(15)S
Sales Tax
May 30, 2006

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION PETITION NO. S050510A

On May 10, 2005, the Department of Taxation and Finance received a Petition for Advisory Opinion from Country Club Partners, LLC, 141 Maple Road, P. O. Box 141, Voorheesville, New York, 12186. Petitioner, Country Club Partners, LLC, provided additional information pertaining to the Petition on August 19, 2005.

The issue raised by Petitioner is whether its various charges to its members and others are subject to sales tax.

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

Petitioner, a for-profit privately owned business entity doing business as a New York Limited Liability Company, recently purchased a golf, tennis and social facility (the "Club"). The Club will sell golf memberships that afford members social privileges and the full use of all facilities, tennis memberships that afford members social privileges and the use of the tennis courts and pool, and social memberships that afford members social privileges and use of the pool. As a condition precedent to Club membership, new members must pay a one-time membership initiation fee in addition to annual dues. A monthly restaurant minimum applies to all memberships. In addition, there will be miscellaneous fees for various items as listed below.

The members will not own a proprietary interest in the Club, will not participate in any manner in management functions or the selection of members, and will not control social or athletic activities. Membership in the Club is open to the general public and is limited solely because of the physical capacity of the facility.

Miscellaneous fees include:

- Annual hole-in-one fee (mandatory for golfing members);
- Annual house fee (mandatory for golfing members) to cover golf bag storage and golf practice range;
- Handicap fee (optional) for golfing members;
- Annual locker fee (optional);
- Golf cart rental (optional);

- Pull cart rental (optional); and
- Guest fees for golf, tennis and the pool (mandatory for members bringing guests).

The annual house fee and hole-in-one fee are not applicable to tennis memberships and social memberships. Customarily, golfers who shoot a hole-in-one will buy drinks for the bar. The hole-in-one fee (applicable only to golf memberships) is paid annually and is held until such time as a golfer hits a hole-in-one. When a golfer hits a hole-in-one, drinks are purchased for the bar using the accumulated fees.

The handicap fee is paid by golfers who wish to have an official handicap computed and kept by the club. A golfer usually needs an official handicap to play in tournaments and match play, but some golfers use the handicap to simply determine their skill level. The fee is for keeping track of a member's golfing scores, which are used to compute the handicap and for computing and periodically updating the member's handicap.

Applicable law and regulations

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

When used in this article for the purposes of the taxes imposed by subdivisions (a), (b), (c) and (d) of section eleven hundred five and by section eleven hundred ten, the following terms shall mean:

* * *

(5) Sale, selling or purchase. Any transfer of title or possession or both, exchange or barter, rental, lease or license to use or consume . . . conditional or otherwise, in any manner or by any means whatsoever for a consideration, or any agreement therefor, including the rendering of any service, taxable under this article, for a consideration or any agreement therefor.

Section 1105 of the Tax Law provides, in part:

Imposition of sales tax On and after June first, nineteen hundred seventy-one, there is hereby imposed and there shall be paid a tax . . . upon:

(a) The receipts from every retail sale of tangible personal property, except as otherwise provided in this article.

* * *

(c) The receipts from every sale, except for resale, of the following services:

* * *

(4) Storing all tangible personal property not held for sale in the regular course of business and the rental of safe deposit boxes or similar space.

* * *

(d) (i) The receipts from every sale of beer, wine or other alcoholic beverages or any other drink of any nature, or from every sale of food and drink of any nature or of food alone, when sold in or by restaurants, taverns or other establishments in this state, or by caterers, including in the amount of such receipts any cover, minimum, entertainment or other charge made to patrons or customers (except those receipts taxed pursuant to subdivision (f) of this section):

(1) in all instances where the sale is for consumption on the premises where sold;

* * *

(f)(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 to a patron for admission 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)(i) 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, and shall be paid on all dues or initiation fees for a period commencing on or after August first, nineteen hundred sixty-five. . . .

Section 527.1(b) of the Sales and Use Tax Regulations provides, in part:

(b) Taxable and exempt items sold as a single unit. When tangible personal property, composed of taxable and exempt items is sold as a single unit, the tax shall be collected on the total price.

Section 527.10(d)(4) of the Sales and Use Tax Regulations provides, in part:

Charges to a patron to or for the use of sporting facilities or activities in which the patron is to be a participant are excluded from tax.

Example 6: Admission charges for the use of bowling lanes and swimming pools are not subject to tax. However, any charge for the use of tangible personal property in conjunction with the sporting activity is taxable. Included as taxable would be bowling shoes, towel and locker rentals.

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

(b) Definitions. As used in this section, the following terms shall mean:

* * *

(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.

(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.

Example 13: A tennis "club" which is owned by an individual provides tennis courts, showers, a sauna and lockers. "Members" pay a seasonal fee to play tennis at a certain time weekly. The "club" provides no other services and has a daily rate for

nonmembers who may use a court when there is free time. This "club" is not a club or organization.

Example 14: A tennis "club" which is owned by an individual provides tennis courts, showers, sauna and lockers. Members pay a seasonal fee to play tennis, any time during the season, without limitation. The club provides no other services and has a daily rate for nonmembers. Since the "club" does not restrict playing to members only and the "club" provides nothing but playing time for its members, charges are for season tickets to play tennis and not for the payment of dues. Therefore, this is not a club or organization.

Example 15: A tennis "club" which is owned by an individual provides tennis courts, showers, sauna and lockers. The "club" sells season passes only, that are referred to as memberships, which are available to anyone on a first-come, first-served basis. This is not a club or organization.

* * *

Example 22: A tennis "club" which is owned by an individual provides tennis courts, showers, sauna and lockers. Members pay a seasonal fee to play tennis. Nonmembers may use the courts, when there is free time, at a daily rate. Anyone waiting to use the courts must use a sign-up sheet, with the courts being assigned on a first-come, first-served basis. A member may not bump a nonmember who has a previous reservation. This is not a club.

* * *

Example 24: The owner of a "club" holds a members-only tournament. Since the tournament is under control of the management and not the members, the fact that the tournament may be restricted to members does not classify the "club" as a club or organization.

Opinion

The Club will sell golf, tennis and social memberships. The members will not own a proprietary interest in the Club, will not participate in any manner in management functions or the selection of members, and will not control the Club's social or athletic activities. Membership in the Club is open to the general public and is limited solely because of the physical capacity of the facility.

In *Cobleskill Golf and Country Club, Inc.*, Adv Op Comm T&F, March 30, 1994, TSB-A-94(13)S, it was held that because members in the petitioner's golf and country club held

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no proprietary rights and had no control over its activities or management, membership was not restricted, and the word "club" as used in the petitioner's name was used as a marketing device (see section 527.11(b)(5) of the Sales and Use Tax Regulations), dues paid by members were not subject to sales tax under section 1105(f)(2)(i) of the Tax Law. See also *Lafayette Golf & Country Club, L.L.C.*, Adv Op Comm T&F, April 17, 1997, TSB-A-97(23)S; *Brierwood Village, Inc.*, Adv Op Comm T&F, February 13, 1989, TSB-A-89(6)S; *Antlers Country Club, Inc.*, Dec Tax App Trib, November 19, 1992, TSB-D-92(79)S. In the present case, because members in the Club possess no proprietary rights in the Club and have no control over its activities or management, membership in the Club is not restricted, and it appears that the word "club" is used by Petitioner as a marketing device (see section 527.11[b][5] of the Sales and Use Tax Regulations), Petitioner is not a "social or athletic club" within the meaning of section 1105(f)(2) of the Tax Law. Therefore, dues and initiation fees paid for membership in the Club are not subject to sales tax under section 1105(f)(2)(i) of the Tax Law.

All members of the Club are required to pay a monthly restaurant minimum in addition to the annual dues and initiation fee. Golfing members must pay an annual house fee to cover golf bag storage and use of the golf practice range and a hole-in-one fee. Club members may also choose to pay an annual locker fee; a handicap fee (for golfing members); fees for golf cart and pull cart rentals; and guest fees for golf, tennis, and use of the pool.

Section 1105(d)(i) of the Tax Law imposes a sales tax on the receipts from "every sale of beer, wine or other alcoholic beverages or any other drink of any nature, or from every sale of food and drink of any nature or of food alone, when sold in or by restaurants, taverns or other establishments in this state, or by caterers, including in the amount of such receipts any cover, minimum, entertainment or other charge made to patrons or customers." Therefore, the Club's charges to its members for sales of food and drink, including any assessments made against a member for failure to meet the monthly minimum, are subject to State and local sales taxes. See *The Core Club 55th Street LLC*, Adv Op Comm T & F, April 1, 2005, TSB-A-05(9)S; *Brierwood Village, Inc.*, *supra*. The hole-in-one fee, when it is collected from members, is not subject to sales tax. However, when the fees are used to purchase food or drink, such purchases are subject to sales tax.

When tangible personal property composed of taxable and exempt items is sold as a single unit, sales tax is collected on the total price. See section 527.1(b) of the Sales and Use Tax Regulations. This rule has been extended to sales of taxable and exempt services and sales of services with tangible personal property. See *PricewaterhouseCoopers LLP*, Adv Op Comm T&F, March 25, 2003, TSB-A-03(11)S; *Salomon & Leitgeb CPA's, LLP*, Adv Op Comm T&F, July 23, 1997, TSB-A-97(44)S. In *Morton L. Coren, P.C.*, Adv Op Comm T&F, June 29, 1990, TSB-A-90(33)S, it was concluded that even though the components of a particular sale could be separately stated, calculated or estimated, if such components could not be separately purchased, the combination of items must be considered as one and, thus, subject to sales tax as a single purchase if any component of the sale is subject to sales tax. See also *Penfold v State Tax*

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Commission, 114 AD 2d 696 [1985]. According to Petitioner's facts, the mandatory annual house fee covers golf bag storage and golf practice range use. A separate and reasonable charge for use of the practice range would not be subject to sales tax. See *I.H.C.C. Inc.*, Adv Op Comm T & F, October 18, 1993, TSB-A-93(56)S. However, a charge for golf bag storage is subject to sales tax under section 1105(c)(4) of the Tax Law. If a single charge is made for golf bag storage and use of the practice range (annual house fee) and these items cannot be purchased separately, the entire charge for the annual house fee is subject to sales tax.

The charge for a handicap fee for golfing members (the Club keeps track of a member's golfing scores and computes and updates the member's handicap periodically) is not subject to sales tax.

The annual locker fees are subject to sales tax pursuant to section 1105(c)(4) of the Tax Law. See *Dapolito & Company, CPA's P.C.*, Adv Op Comm T & F, September 28, 1994, TSB-A-94(45)S; *Steuben Place-Recreational Corp.*, Adv Op St Tx Comm, October 7, 1982, TSB-A-82(35)S.

For sales tax purposes, the terms *sale*, *selling* and *purchase* include rentals or leases of tangible personal property. See section 1101(b)(5) of the Tax Law. Therefore, the Club's charges for golf cart and pull cart rentals are subject to sales tax under section 1105(a) of the Tax Law.

Guest fees for golf, tennis, and use of the pool are admission charges for use of sporting facilities where the patron is a participant; and such admission charges are excluded from sales tax pursuant to section 1105(f)(1) of the Tax Law and section 527.10(d)(4) of the Sales and Use Tax Regulations.

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