

**New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Taxpayer Guidance Division**

TSB-A-08(2)S
Sales Tax
January 7, 2008

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S070213A

On February 13, 2007, the Department of Taxation and Finance received a Petition for Advisory Opinion from Hamlet Golf and Country Club, Inc., 400 Post Avenue, Westbury, New York 11590. Petitioner, Hamlet Golf and Country Club, Inc., provided additional information pertaining to the Petition on June 26, 2007.

The issue raised by Petitioner is whether its dues and fees are subject to sales tax.

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

Petitioner is a for-profit, privately owned business entity. Petitioner sells golf memberships that afford its members full use of all its facilities including a golf course, tennis courts, the swimming pool, and the dining room. Petitioner also sells social memberships which include all of the above except golf privileges. The total number of memberships is limited only by the physical capacity of the facility.

Petitioner surrounds a 170-unit private-home community. The community is a separate entity that was built by the company that owns and operates Petitioner. Club members include both people from the private-home community (homeowners) and people from outside the private-home community (non-homeowners).

In order to provide a continuous business base for the club, all homeowners are, subject to the approval of the management of the club, required to be either social members or golf members. Homeowners are not charged an initiation fee to join. Petitioner's by-laws allow non-homeowners to be charged an initiation fee but, in practice, the fee is waived. Other than the initiation fee, there is no difference in charges to homeowners and non-homeowners.

Petitioner's by-laws specify the number of memberships available as 170 golf memberships for homeowners who wish to exercise this entitlement, 155 golf memberships to non-homeowners, and 75 golf memberships and 100 social memberships to corporate members. Social memberships, with no limitation on the number, are also available to non-homeowners. All classes of membership enjoy the same privileges, except that social memberships do not include golf privileges. The by-laws further permit the club to sell any or all of the 170 homeowner-entitled golf memberships that are not taken by a homeowner to any non-homeowner on an annual basis. Over the past several years, there has been an average of 110 homeowner golf members, which has left 215 golf memberships available to non-homeowners in addition to the 75 corporate golf memberships. Recently, Petitioner's golf memberships have not been sold out, and Petitioner continues to actively seek additional members.

Petitioner's management arranges golf outings for the public one day per week. On this day, the membership is not permitted to use the facilities. Petitioner also conducts catered parties for the public.

The members do not have any proprietary interest in the club, do not participate in any way in management functions or selection of members, and do not control any social or athletic activities.

Membership in the club for non-homeowners is open to the public on a first-come first-served basis to any person of good character over the age of 21 with the financial ability to sustain the membership. Club membership is limited only by the physical capacity of the facility. All prospective members, whether homeowners or non-homeowners, must be interviewed by Petitioner's board of directors before becoming club members.

The club charges annual dues to all of its members. A monthly dining room minimum applies to all members. In addition, there are other fees for various items as listed below:

- Annual hole-in-one fee - applicable to golf members only; it covers the traditional provision of drinks when a member scores a hole in one;
- Bag-storage charge - applicable to golf members only; it is for the storage of a member's golf clubs;
- Handicap fee - applicable to golf members only; it pays for keeping track of a golfer's scores for the purpose of computing his or her handicap used for tournament play;
- Range fee - applicable to golf members only; it permits a member to use the golf driving range;
- Locker fee – it is for the use of a locker in the club locker room;
- Parking charge - it is for valet parking;
- Special events charge - it is a charge to all members to supplement the annual dues to help cover costs associated with events such as dinner dances; this is apart from the costs for food and beverages;
- Tournament fee - it is a charge to all golf members to supplement the annual dues to help cover costs associated with golf tournaments; any food or beverage costs are in addition to this cost;

- Service charge - it is a charge to all members to supplement the annual dues to help cover costs associated with labor and costs other than for food or beverages; and
- Energy surcharge - it is a charge imposed on all members to accommodate the increased cost of utilities.

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:

* * *

(6) Dues. 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, except charges for sports privileges or facilities offered to members' guests which would otherwise be exempt if paid directly by such guests.

* * *

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

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:

* * *

(f)(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 527.11(b) of the Sales and Use Tax Regulations provides, in part:

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

* * *

(2) Dues. (i) The term *dues* includes:

- (a) any dues or membership fee;
- (b) any assessment, irrespective of the purpose for which made; and
- (c) any charge for social or sports privileges or facilities.

Example 1: A social club operates a restaurant and bar for the use of its members. The club requires of each member a minimum expenditure during the year of \$200 for food and drink. If a member does not make actual expenditures totaling \$200, he is billed for an additional amount equal to the difference between his actual expenditures and \$200. The additional amount constitutes taxable dues or membership fees, inasmuch as such charge must be paid for the privilege of being a member of the club.

* * *

Example 3: A social club collects no regular dues or membership fees, but meets its operating expenses by levying assessments on its members as funds are required. These assessments constitute taxable dues or membership fees where the fees, combined with annual dues, exceed \$10.

Example 4: A social club wishes to expand its clubhouse by adding a new dining room to it. In order to finance the construction, the club will assess each member \$100. The assessment is subject to tax as dues, regardless of the fact that the proceeds will be used for a capital improvement.

Example 5: A social club collects \$10 per year from each of its members as regular dues. Members are entitled to use the clubhouse facilities without payment of an additional charge. However, members who wish to use the golf course may do so only upon payment of an additional charge. Since the golf course is a social or athletic club facility, any charge made by the club to a member for the use of the course constitutes dues. The fact that such charges are made upon the member's election to use the course is immaterial.

* * *

(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;

* * *

Example 18: A club owned by an individual which attempts to restrict its membership by geographic area, income, race, religion or any other means, is a club or organization. However, a “club” owned by an individual which restricts its membership only because of the physical capacity of its facilities is not a club or organization.

* * *

(6) Social club. A *social club* is any club or organization which has a material purpose or activity of arranging periodic dances, dinners, meetings or other functions affording its members an opportunity of congregating for social interrelationship.

* * *

(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.

Opinion

Section 1105(f)(2) of the Tax Law imposes sales 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.

Petitioner is a for-profit, privately owned business entity that surrounds a 170-unit private-home community. Petitioner sells golf memberships that afford its members full use of all its facilities including a golf course, tennis courts, the swimming pool, and the dining room. Petitioner also sells social memberships that include all of the above except the golf privileges. The total number of memberships is limited only by the physical capacity of the facility. In order to provide a continuous business base for the club, all homeowners in the private home community are, subject to the approval of the management of the club, required to be either social members or golf members.

Petitioner's by-laws specify the number of memberships available as 170 golf memberships for homeowners who wish to exercise this entitlement, 155 golf memberships to non-homeowners, and 75 golf memberships and 100 social memberships to corporate members. Social memberships, with no limitation on the number, are also available to non-homeowners. The by-laws further permit the club to sell any (or all) of the 170 homeowner-entitled golf memberships that are not taken by a homeowner to anyone from the public on an annual basis.

Although Petitioner offers numerous additional memberships to the general public, the requirement that all homeowners in the private-home community, subject to the approval of Petitioner, become golf or social members in Petitioner is a restriction on membership and an attempt at exclusivity. See *Epstein v United States*, 357 F2d 928; *Fox Wander West Neighborhood Association, Inc.*, Adv Op St Tx Comm, July 29, 1980, TSB-H-80(156)S; and *The Hamlet Golf and Country Club*, Adv Op Comm T & F, October 18, 1994, TSB-A-94(47)S. Since Petitioner attempts to restrict membership in the club, it is considered to be a *club* or *organization* within the meaning and intent of section 527.11(b)(5) of the Sales and Use Tax Regulations. See Example 18 of section 527.11(b)(5). This is true even though no members of the club control social or athletic activities, tournaments, dances, elections, or committees; participate in the selection of members and management of the club; or possess a proprietary interest in the club. See *Cobblestone Creek Country Club, Inc.*, Adv Op Comm T & F, November 2, 1992, TSB-A-92(74)S.

Since Petitioner is a club or organization of which a material purpose or activity is social or athletic, Petitioner is a social or athletic club for sales tax purposes. See section 1101(d)(13) of the Tax Law. Section 1101(d)(6) of the Tax Law defines *dues* as "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." Accordingly, Petitioner's charges to its members, whether in the form of annual dues, monthly dining room minimum, or other fees (i.e., annual hole-in-one fee, bag-storage charge, handicap fee, range fee, locker fee, parking charge, special-events charge, tournament fee, service charge, energy surcharge) fall within the definition of *dues* and are subject to sales tax pursuant to section 1105(f)(2) of the Tax Law. See section

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527.11(b)(2)(i) of the Sales and Use Tax Regulations and *Dapolito & Company, CPA's P.C.*, Adv Op Comm T & F, September 28, 1994, TSB-A-94(45)S.

DATED: January 7, 2008

/s/
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Taxpayer Guidance Division

NOTE: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion.