

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

TSB-A-08(38)S
Sales Tax
August 22, 2008

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S070724C

On July 24, 2007, the Department of Taxation and Finance received a Petition for Advisory Opinion from Lawrence F. Hughes, 42-65 Kissena Boulevard, Apartment 609, Flushing, New York 11355-3267. Petitioner, Lawrence F. Hughes, provided additional information pertaining to the Petition on March 24, 2008.

The issue raised by Petitioner is whether individual fees paid to the Transportation Research Board are subject to sales tax.

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

The Transportation Research Board is one of six major divisions of the National Research Council, a private, nonprofit institution that is the principal operating agency of the National Academies in providing services to the government, the public, and the scientific and engineering communities. The National Research Council is jointly administered by the National Academy of Sciences, the National Academy of Engineering, and the Institute of Medicine. The Transportation Research Board's varied activities annually engage more than 7,000 engineers, scientists, and other transportation researchers and practitioners from the public and private sectors and academia, all of whom contribute their expertise in the public interest by participating on Transportation Research Board committees, panels, and task forces. The program is supported by state transportation departments, federal agencies including the component administrations of the U.S. Department of Transportation, and other organizations and individuals interested in the development of transportation. The mission of the Transportation Research Board is to provide leadership in transportation innovation and progress through research and information exchange, conducted within a setting that is objective, interdisciplinary, and multimodal. In an objective and interdisciplinary setting, the Board facilitates the sharing of information on transportation practice and policy by researchers and practitioners; stimulates research and offers research management services that promote technical excellence; provides expert advice on transportation policy and programs; and disseminates research results broadly and encourages their implementation.

The National Research Council is part of the National Academies, which also comprise the National Academy of Sciences, National Academy of Engineering, and Institute of Medicine. They are private, nonprofit institutions that provide science, technology, and health policy advice under a congressional charter. The Research Council was organized by the National Academy of Sciences in 1916 to associate the broad community of science and technology with the Academy's purposes of furthering knowledge and advising the federal government. Functioning in accordance with general policies determined by the Academies, the National Research

Council has become the principal operating agency of both the National Academy of Sciences and the National Academy of Engineering in providing services to the government, the public, and the scientific and engineering communities. The Research Council is administered jointly by both Academies and the Institute of Medicine through the National Research Council Governing Board.

As a resource to the nation and to the transportation community worldwide, the Transportation Research Board provides an extensive portfolio of services. Among these services are opportunities for information exchange on current transportation research and practice, management of cooperative research and other research programs, analyses of national transportation policy issues and guidance on federal and other research programs, and publications and access to research information from around the world.

Institutional, individual and student affiliates contribute to the support of the Transportation Research Board activities through annual fees. Benefits received by individual affiliates upon payment of the annual fee include use of the Transportation Research Board's library, a reduction in the registration fee for the Transportation Research Board annual meeting, receipt of a complimentary subscription to TR News (a journal of current transportation research and news), eligibility to participate in the Transportation Research Board subscription service, a discount on single copies of most publications of the Transportation Research Board, including subscriptions to *TRR Journal Online (Transportation Research Record: Journal of the Transportation Research Board)*, and announcements of the annual meeting and other professional conferences.

Petitioner has a professional and academic background in transportation issues, and has paid the annual fee to become an individual affiliate of the Transportation Research Board. Petitioner attends the annual meetings of the Board, which generally last several days and include workshops, committee and panel discussions, and presentations on transportation issues. Petitioner has participated in committee and panel discussions at these annual meetings.

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:

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

* * *

(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 1105(c) of the Tax Law imposes tax upon the receipts from every sale, except for resale, of certain enumerated services.

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

(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.

* * *

(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

Affiliate benefits received for the payment of an annual fee to the Transportation Research Board include several items relating to the Board's mission. Such fee entitles Petitioner to a number of benefits including use of the Transportation Research Board's library, a reduction in the registration fee for the Transportation Research Board annual meeting, receipt of a complimentary subscription to TR News, eligibility to participate in the Transportation Research Board subscription service, a discount on single copies of most publications of the Transportation Research Board, including subscriptions to *TRR Journal Online*, and announcements of the annual meeting and other professional conferences.

From the information submitted by Petitioner, the Transportation Research Board does not appear to have a material purpose or activity of arranging periodic functions affording its members an opportunity of congregating for social interrelationship, or the practice, participation in or promotion of any sports or athletics. Therefore, the Transportation Research Board is not a social or athletic club as contemplated in section 1101(d) of the Tax Law, and the fees paid to it are not dues paid to a social or athletic club under section 1105(f) of the Tax Law. See section 527.11(b) of the Sales and Use Tax Regulations.

According to the information provided by Petitioner and the information appearing on the Transportation Research Board's Web site, affiliate fees paid by individuals to the Transportation Research Board entitle the individuals to a variety of benefits including use of the Board's library, discounts on the registration fee for the annual Board meeting and Board publications, and announcements of the annual meeting and professional conferences. The fees appear to be in the nature of membership fees paid by individuals to join and support a professional organization that is not a social or athletic club under section 1105(f) of the Tax Law. The fees do not appear to be a charge for tangible personal property taxable under section 1105(a) of the Tax Law or for a service taxable under section 1105(c) of the Tax Law. The Tax Department has previously determined that membership fees paid to organizations that are not social and athletic clubs entitling members to various benefits and services are not subject to the tax imposed pursuant to section 1105(f) of the Tax Law. See *Sea Tow Services International, Inc.*, Adv Op Comm T&F, July 31, 2001, TSB-A-01(23)S. Accordingly, based on the facts

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submitted by Petitioner, annual fees paid to the Transportation Research Board by individual affiliates are not subject to sales tax.

DATED: August 22, 2008

/s/
Jonathan Pessen
Tax Regulations Specialist IV
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.