

New York State Department of Taxation and Finance
Office of Counsel
Advisory Opinion Unit

TSB-A-09(26)S
Sales Tax
June 24, 2009

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S090413A

Petitioner [REDACTED] asks whether its charges for the use of its driving facilities are subject to sales and use tax. We conclude that those charges are not taxable.

Facts

Petitioner sells long-term licenses to persons wanting to access and use driving facilities that petitioner operates on a 166-acre site in upstate New York. The site includes a road course that is approximately four miles long and a clubhouse that features dining room facilities, locker rooms, spa, and overnight accommodations.

Attached to the petition is an agreement entitled "Founding Resident Membership Agreement." Under the agreement, petitioner may sell a specified number of various classes of membership licenses granting the license holders varying rights to use the facility. An individual wanting to use the facility must purchase the membership license and also pay annual dues. At no extra charge, members are given a specified number of qualified driver guest passes, which entitle the guest to drive on the road course, as well as non-driver guest passes.

The agreement provides that persons possessing resident memberships have no interest in the club. The agreement further provides that petitioner has the power to make most decisions regarding the facilities and the club's operating and financing activities. According to petitioner, members have no control over the choice of members or the operation of the club. The membership license and the annual dues entitle only the purchaser to use the facilities. Petitioner separately charges for food and drink, car storage, and over-night occupancies. It collects tax on those charges. The only limitation on the number of memberships sold is the size of the facility, and all are free to apply.

Analysis

Sales tax is imposed upon any admission charges or for the use of any place of amusement, but not including "charges to a patron for admission to, or use of, facilities for sporting activities in which such patron is to be a participant" (Tax Law section 1105[f][1]). Here, the licenses permit purchasers to use a road track facility, a participatory sport. Accordingly, those charges are not taxable under section 1105(f)(1) (TSB-A-90(6)S, Feb. 8, 1990 [charge for the use of a Go-Kart and racing track is exempt as charge for the use of facilities for sporting activities]).

Sales tax is also imposed upon the dues of any social or athletic club in excess of ten dollars a year (Tax Law section 1105[f][2][i]). In the present case, members do not control any social or athletic activities, do not participate in the selection of members or club management, and do not possess any proprietary interest in petitioner. The only limitation on the number of memberships sold is the size of the facility, and all are free to apply. Therefore, petitioner is not operating an athletic club as defined in paragraphs (5) and (7) of section 527.11(b) of the Sales and Use Tax Regulations, and its charges are not subject to tax as dues paid to an athletic club under section 1105(f)(2) of the Tax Law (Sales Tax Reg. 527.11(b)(5)[ii][Ex. 15];

TSB-A-93(56)S [membership dues at a golf club not subject to sales tax because membership is limited solely based on the facilities' physical capacity and members had no control over the facilities management or operation]).

Petitioner also makes other sales that would be taxable, such as car storage and meals (see Tax Law section 1105[c][6], [d]). Petitioner separately charges for and collects tax on those sales, so those transactions are not at issue here.

DATED: June 24, 2009

/S/

Jonathan Pessen
Director of Advisory Opinions
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