

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S140204B

The Department of Taxation and Finance received a Petition for Advisory Opinion from the [REDACTED] (“Petitioner”). Petitioner asks whether the dues of certain membership classes are subject to State and local sales tax.

We conclude that Petitioner must collect sales taxes on dues, assessments and other fees for all classes of membership.

Facts

Petitioner is a social or athletic club as provided Tax Law § 1105(f)(2), and has seven different classes of membership (A, B, C, G, SA, SB and Associate). According to Petitioner’s by-laws, “A” and “G” classes of membership enjoy full club privileges. “A” class members pay dues of at least \$100.00 per year. Members of other classes of Petitioner pay varying amounts of dues each year, including annual amounts that may be less than \$10.00 per year. Specifically:

- “B” class members pay a one-time initiation fee of \$600.00, dues of \$100.00 per year, an annual assessment for insurance of \$100.00 per year, and an annual assessment for a building fund of \$80.00 per year;
- “C” class members do not pay any annual dues or assessments;
- “G” class members pay a total of \$1.00 in dues and assessments per year;
- “SA” class members pay a total of \$10.00 in dues and assessments per year;
- “SB” class members pay a total of \$10.00 in dues and assessments per year; and,
- “Associate” class members pay a total of \$100.00 in dues and assessments per year.

Analysis

The sales and use tax regulations provide in relevant part:

(a) *Imposition.*

(1) A tax is imposed upon 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 \$10 per year.

(2) A tax is imposed on the initiation fee paid to any social or athletic club, regardless of the amount of dues, if such initiation fee is in excess of \$10.

(3) Where the tax applies to any social or athletic club, the tax shall be paid by all members thereof, regardless of the amount of their dues or initiation fee.

20 NYCRR § 527.11

Petitioner acknowledges that it is a social or athletic club for sales tax purposes. Petitioner's "A" membership class has full club privileges and thus are "active annual members" (*see* 20 NYCRR § 527.11[b]). Furthermore, since Petitioner's class "A" members are active annual members and pay dues, or assessments, in excess of \$10.00 a year, sales taxes must be collected on Petitioner's class "A" membership dues.

Petitioner's other membership classes may not have full club privileges and/or pay dues or assessments of \$10 or less a year. As noted above, the sales tax regulations specifically provide: "[w]here the tax applies to any social or athletic club, the tax shall be paid by all members thereof, regardless of the amount of their dues or initiation fee" NYCRR § 527.11(a)(3). Example "1" under NYCRR § 527.11 provides the following illustration for the proper application of the regulations:

A social club maintains two types of memberships. Full memberships are \$15 per year and limited memberships are \$5 per year. Since the dues paid by the full members are in excess of \$10 per year, all members' dues are taxable even though some are not more than \$10.

Thus, although some of Petitioner's membership classes pay dues or assessments of \$10.00 or less a year, or do not have full club privileges, the dues of all classes are subject to State and local sales tax because Petitioner's class "A" membership independently meets the requirements for application of the sales tax. Therefore, Petitioner must collect sales tax on the dues, assessments or other fees for all classes of membership.

DATED: March 23, 2015

/S/

DEBORAH R. LIEBMAN
Deputy Counsel

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. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.