

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-A-82(17)S
Sales Tax
May 3, 1982

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S811117F

On November 17, 1981, a Petition for Advisory Opinion was received from Sun and Surf Beach Club, Inc., P. O. Box 367, Atlantic Beach, New York 11509.

The issue raised is whether receipts from the rental of the club's "cabanas" are subject to sales tax as "dues" within the meaning of section 1101(d)(6) of the Tax Law.

Petitioner is a beach club located at Atlantic Beach, New York. It makes available to its members beach facilities, a cafeteria, a restaurant, tennis courts and other facilities. Additionally, the club rents out cabanas to its members.

The club operates during the summer season. Individuals may apply for seasonal membership. A separate portion of the seasonal membership application form contains an application for rental of a cabana. Season members are not required to rent cabanas. Many do not. The charges for seasonal membership dues and for rental of cabanas are each separately stated on the application. Season members who rent cabanas are billed separately for membership dues and for cabana rental. Each member who rents a cabana is given exclusive possession of a specific cabana for the entire season.

The cabanas are permanent structures, constructed of wood and immovably attached to wood pilings driven into the ground. A typical cabana is approximately 15 feet long by 8 feet wide and 10 feet high. Each cabana is divided into small rooms, and is provided with plumbing and electrical equipment, a shower and a refrigerator. The cabanas are suitable for use as sleeping facilities and are so used by members.

Section 1105(f)(2) of the Tax Law imposes a sales tax on "the dues paid to any social or athletic club in this state" Section 1101(d)(6) of the Tax Law defines the term "dues" as: "Any dues or membership fee including any assessment, irrespective of the purpose for which made, and any charge 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." No sales tax is imposed in New York State on receipts from the rental of real property.

The Appellate Division has ruled, with respect to circumstances in all essential respects identical to the circumstances described in the present Petition, that receipts from the rental of cabanas are not dues paid to a social or athletic club but are, instead, receipts from the rental of real

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property and thus not subject to sales tax. (Breezy Point Surf Club, Inc. v. State Tax Commission, 67 A. D. 2d 760, 412 N.Y.S. 2d 464).

Accordingly, the receipts from the rental of cabanas by Petitioner are receipts from the rental of real property, and are not subject to sales tax.

DATED: April 15, 1982

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau