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

TSB-A-82(38)S
Sales Tax
October 28, 1982

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION PETITION NO. S820318A

On March 18, 1982 a Petition for Advisory Opinion was received from Crag Burn Golf Club, Inc., North Davis Road, East Aurora, New York 14052.

The issue raised is whether sales tax is due upon Petitioner's purchases of topsoil, seed, fertilizer and chemicals used to improve and maintain its golf course.

Petitioner is an unincorporated, not-for-profit golf club which operates a golf course. The golf club is supported by the dues and assessments paid by the members, who are entitled to use the golf course. Petitioner contends that the items enumerated above are, in effect, purchased for resale, inasmuch as the club members pay dues and assessments for the use of the golf course into which the topsoil, seed, fertilizer and chemicals have been incorporated.

Section 1105(a) of the Tax Law imposes a tax on the receipts from retail sales of tangible personal property. The term "retail sale" is defined in section 1101(b)(4) of the Tax Law as: "A sale of tangible personal property to any person for any purpose, other than (A) for resale as such or as a physical component of tangible personal property, or (B) for use by that person in performing the services subject to tax under paragraphs (1), (2), (3) and (5) of subdivision (c) of section eleven hundred five where the property so sold becomes a physical component part of the property upon which the services are performed or where the property so sold is later actually transferred to the purchaser of the service in conjunction with the performance of the service subject to tax."

The items purchased are not resold as such or as a physical component of tangible personal property. Neither are they purchased for use in performing a taxable service. Petitioner's maintenance of its golf course for use by its members does not constitute the rendering of a service subject to tax, for while such activity does come within the category of "maintaining, servicing or repairing real property, property or land," as described in section 1105(c)(5) of the Tax Law, such activity would constitute a service "subject to tax" only where it is performed for another and gives rise to receipts. Such is not the case here. Petitioner's members' dues and assessments do not constitute such receipts.

Petitioner's citation of Finch, Pruyn & Co. v. Tully, 69 AD 2d 192 and Burger King, Inc. v. Tully, 70 AD 2d 447, compel no conclusion contrary to that expressed herein, for the holdings in both of those cases rested on a finding of an actual transfer to the ultimate customer of the item purchased. Nor is Petitioner's complaint of double taxation well founded. Petitioner pays tax on its purchases of items of tangible personal property pursuant to section 1105(a) of the Tax Law. Its

members pay tax on their dues and assessments pursuant to section 1105(f)(2) of the Tax Law, which imposes a tax on "the dues paid to any social or athletic club in this state." The two tax liabilities arise from the consummation of wholly separate transactions, and thus creates no improper redundancy.

DATED: October 12, 1982

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau