

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

TSB-A-83(43)S
Sales Tax
October 24, 1983

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S830812A

On August 12, 1983 a Petition for Advisory Opinion was received from Plaza Athletic Club, Inc., 50 Chestnut Street, Rochester, New York 14604.

The issue raised is whether Petitioner is required to collect sales tax on membership dues.

Petitioner operates a health and fitness center consisting of Nautilus, racquetball, aerobics, weights, swimming pool and saunas. Memberships can be purchased for all functions or purchased on an individual basis.

The members of the organization do not participate in management decisions, do not select other members, and neither have a proprietary interest in the organization nor control social or athletic activities.

Section 1105(f)(2) of the Tax Law imposes a tax on "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 "

Section 527.11(b)(5) of the Sales and Use Tax Regulations provides as follows:

(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.

- (ii) A club or organization does not exist merely because a business entity:
- (a) charges for the use of facilities on an annual or seasonal basis, even if an annual or season pass is the only method of sale and provided such passes are sold on a first-come, first-served basis;
 - (b) restricts the size of the membership solely because of the physical size of the facility. Any other type of restriction may be viewed as an attempt at exclusivity;
 - (c) uses the word club or member as a marketing device;

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- (d) offers tournaments, leagues and social activities which are controlled solely by the management.

Inasmuch as the organizational structure of Petitioner's business operation does not allow for membership control of social or athletic activities, tournaments, dances, elections, committees, participation in the selection of members or management of the club, and since there is no evidence of possession by the members of a proprietary interest in the organization, or of exclusivity with respect to membership, Petitioner does not constitute a social or athletic club within the meaning of section 1105(f)(2) of the Tax Law. Accordingly, the membership charges do not constitute "dues" subject to tax.

DATED: October 13, 1983

s/FRANK J. PUCCIA
Director
Technical Services Bureau