

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

TSB-A-83(48)S
Sales Tax
December 12, 1983

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S830916A

On September 16, 1983 a Petition for Advisory Opinion was received from Max Pollock, 270-04V Grand Central Parkway, Floral Park, New York 11005.

The issue raised is whether payments for membership in the Towers Country Club are subject to the sales tax imposed under section 1105(f)(2) of the Tax Law.

Petitioner states that a business entity, the "Towers Country Club," owns and operates the Towers Country Club on the premises of the North Shore Towers, an apartment complex in Queens, New York. Facilities include a golf course, indoor and outdoor swimming pools, tennis courts, sauna, shower, locker rooms and lounges. Only residents of the North Shore Towers are eligible to become general members of the club, and only general members qualify for golf or tennis memberships. Petitioner also states that members do not have a proprietary interest in the club nor any control over the operation of the club. A membership application form and a membership information brochure submitted by Petitioner each state that only residents of the North Shore Towers are eligible to become members.

Section 1105(f)(2) of the Tax Law imposes a sales tax on dues paid to any social or athletic club in this state. Section 527.11(b)(2) of the Sales and Use Tax Regulations defines the term "dues" as "(a) any dues or membership fee, (b) any assessment, irrespective of the purpose for which made, and (c) any charges for social or sports privileges or facilities."

The Regulations go on to describe a "club or organization" as "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;
 - (d) offers tournaments, leagues and social activities which are controlled solely by the management." 20 NYCRR 527.11(b)(5)

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The Regulations provide the following example, germane to the present case: "An association owns land on which it provides tennis courts and bathing beaches, with equipment and attendants and parking lots for members and their guests, gives parties for members and guests, provides water to the land of its members and maintains private roads. Only the owners of property in the vicinity of the association's land, may be members of the association. The association is an athletic club as the use of its facilities is restricted to members and a material purpose of it is providing sports privileges and facilities." 20 NYCRR 527.11(b)(7), Example 30.

The foregoing example illuminates the significance of the reference to exclusivity contained in 20 NYCRR 527.11(b)(5)(ii)(b). That is, where an arrangement is made for the provision of facilities and services of a type normally found in an athletic or social club, such as a country club, and the use of such facilities and services is made available only to a limited group of people (except where memberships offered on a first-come, first-served basis are limited in number by the physical dimensions of the establishment), the same will constitute a social or athletic club within the meaning of section 1105(f)(2) of the Tax Law, even in the absence of membership control or proprietorship of the club. In the present instance, membership in the Towers Country Club, which makes available services and facilities of a type normally found in country clubs, is limited to residents of the North Shore Towers apartment complex. Such exclusivity, in accordance with the provisions of the Sales and Use Tax Regulations here cited, renders the Towers Country Club a social or athletic club, and the fees collected for membership therein constitute dues subject to tax under section 1105(f)(2) of the Tax Law.

DATED: November 18, 1983

s/FRANK J. PUCCIA
Director
Technical Services Bureau