

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO: S870622B

On June 22, 1987, a Petition for Advisory Opinion was received from Pickwick at Rocky Point Beach Club, Inc., P.O. Box 300, Rocky Point, New York 11778.

The issue raised is whether Petitioner's charges to members are dues paid to a social or athletic club within the meaning and intent of Section 1105(f)(2) of the Tax Law.

Petitioner is a homeowners association organized in 1967 under the provisions of the New York Membership Corporation Law. Yearly membership dues from inception have exceeded \$10.00 per homeowner.

The corporate bylaws give as the purpose of the corporation "to promote the health, safety and welfare of its members, and for this purpose to own. . . and maintain a beach facility on Long Island Sound. . . ." Membership is required of "every person or entity who is a record owner of a fee or undivided fee interest in any lot, which is subject by covenants of record to assessment by the Association. . . ." The bylaws further provide for the assignment of voting rights to each member and for management of the association through a board of directors elected by the members.

The association has not conducted any social functions since 1979; it owns no equipment except buoys to mark off the swimming area and a lifeguard chair.

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

(t)he 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, and on the initiation fee alone, regardless of the amount of dues, if such initiation fee is in excess of ten dollars. . . . Where the tax on dues applies to any such social or athletic club, the tax shall be paid by all members thereof regardless of the amount of their dues, and shall be paid on all dues or initiation fees for a period commencing on or after August first, nineteen hundred sixty-five. . . .

The term "club" is defined in the Sales and Use Tax Regulations of the State Tax Commission 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. . . 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. (Emphasis added).

The regulations explain further that a business entity is not considered a "club or organization" merely because it restricts the size of the membership solely by reason of the physical size of the facility, but that any other type of restriction may be viewed as an attempt at exclusivity. For example, a club which restricts its membership by geographic area is a "club or organization". 20 NYCRR 527.11(b)(5).

Regulation Section 527.11(b)(7) defines an athletic club as "any club or organization which has as a material purpose or activity the practice, participation in or promotion of any sports or athletics". It offers the following example:

Example 31: Each purchaser of a lot or condominium within a real estate subdivision automatically becomes a member of an association which operates a pool, tennis courts and nature trails within the subdivision. The association assesses each owner of an annual charge to provide funds for the operation of these facilities. The association has the right to limit the number of guests of members and to charge reasonable fees for the use of the facilities. The association is an athletic club, as it has a material purpose of providing sports privileges and facilities. The fact that membership is automatic upon purchase of real property has no effect on the association's status as a club.

Clearly, the format of Petitioner's organization and its activities fall within the purview of the above quoted sections of the Tax Law and regulations. Accordingly, amounts assessed its members are taxable as dues paid to a social or athletic club in this State.

Petitioner also questions whether its tax status is affected by an amendment to the regulation section at issue, dated June 14, 1982. It is assumed that the inquiry refers to the addition of paragraph three to subdivision (c) of Section 527.11 of the sale and use tax regulations. Since this provision

exempts from tax dues paid to organizations operated exclusively to foster national or international amateur sports competition, it does not apply to the Petitioner. All membership dues paid to the association from its inception to the present are subject to State and, when applicable, local sales taxes.

DATED: September 25, 1987

s/FRANK J. PUCCIA
Director
Technical Services Bureau

NOTE: The opinions expressed in Advisory Opinions
are limited to the facts set forth therein.