

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

TSB-A-92 (13) S  
Sales Tax  
February 19, 1992

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S920103A

On January 3, 1992, a Petition for Advisory Opinion was received from Bluff Point Golf and Country Club, Inc., Box 9A, Lakeshore Road, Plattsburgh, New York 12901.

The issue raised by Petitioner, Bluff Point Golf and Country Club, Inc., is whether membership dues paid to Petitioner are subject to State and local sales taxes.

Petitioner is the sole owner and operator of a golf course and country club which provides its members with the use of an eighteen hole golf course, a clubhouse and restaurant and bar.

All members are eligible to participate in the use of the golf course and golf tournaments. The tournaments are controlled by Petitioner and are subject to Petitioner's discretion.

The members are entitled to participate in all social gatherings, dances and other social functions which are completely sponsored and controlled by Petitioner.

Petitioner retains sole control and authority over the use of the golf course and full facilities. The membership does not have any control or rights over social functions or golf tournaments. The membership does not participate in the selection of other members and management. Membership is open to the general public on a first come, first serve basis and is not restricted in any way.

Members do not possess a proprietary interest in Petitioner.

The term "club" and "member" are used solely as a marketing device.

Members serve on an advisory board to act as a form of communication between members and management. All decisions are made strictly by the management.

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 defines the term "club or organization" as follows:

(5) Club or organization. (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.

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

Example 18: A club owned by an individual which attempts to restrict its membership by geographic area, income, race, religion or any other means, is a "club or organization". However, a "club" owned by an individual which restricts its membership only because of the physical capacity of its facilities is not a club or organization.

In Brierwood Village, Inc., Adv Op Comm T&F, February 13, 1989, TSB-A-89(6)S, the Commissioner advised that inasmuch as (1) the membership of the club possessed no proprietary rights therein and had no control over its activities or management and (2) membership in the club was not exclusive, with members being appointed and accepted from a waiting list maintained by Petitioner, the subject club was not a "social or athletic club" within the meaning of section 1105(f)(2) of the Tax Law. Annual membership "fees" or "dues" were thus not subject to the imposition of sales tax.

Accordingly, pursuant to Section 1105(f)(2) of the Tax Law, Section 527.11(b)(5) of the Sales and Use Tax Regulations and Brierwood Village, Inc., *supra*, since membership is not exclusive, members possess no proprietary interest in Petitioner and have no control over its

TSB-A-92 (13) S  
Sales Tax  
February 19, 1992

activities or management, and the term "club" and "member" are used solely as a marketing device, Petitioner, is not a social and athletic club and, therefore, membership dues paid by members are not subject to State and local sales taxes.

DATED: February 19, 1992

s/PAUL B. COBURN  
Deputy Director  
Taxpayer Services Division

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