

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

TSB-A-94 (22)S
Sales Tax
May 3, 1994

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S940208A

On February 8, 1994 a Petition for Advisory Opinion was received from Youngstown Yacht Club, Inc., P.O. Box 379, Youngstown, NY 14174.

The issues raised are whether charges for tuition for sailing instructions and charges for mooring boats are subject to sales tax.

Petitioner, Youngstown Yacht Club, Inc., is a private social and athletic club owning real property adjacent to the Niagara River in Youngstown, New York. Petitioner was formed to promote the sport of sailing. In furtherance of this purpose, Petitioner provides a junior sailing program and an adult sailing program for the instruction of sailing techniques, on-the-water safety, seamanship, and in the case of the junior sailing program, sailboat racing.

The junior and adult sailing programs are open to the public, although preference is given to relatives of club members. Most (but not all) students in the junior and adult sailing programs are relatives of club members. Petitioner provides the Village of Youngstown a scholarship to award to any individual without the means to pay for junior sailing program tuition.

Also in furtherance of Petitioner's purposes, Petitioner maintains (pursuant to permits issued by the US Army Corp of Engineers) two mooring areas in the general vicinity of Petitioner's real property. In connection with administering the mooring areas, Petitioner contracts with a third-party every spring to place moorings in the two areas. A mooring consists of a steel weight attached by chain and/or rope to a mooring float. Boat owners contract with Petitioner for moorings, and each boat owner is assigned a particular mooring within the two areas administered by Petitioner.

Historically, boat owners who are not members of the club have had moorings in the areas administered by Petitioner. For the privilege of maintaining a mooring in these areas, non-members are required to pay Petitioner a mooring fee equivalent to that paid by members. Currently, no non-members have moorings in the two areas administered by Petitioner. However, while Petitioner may exercise a preference to provide moorings to club members, it is Petitioner's policy to provide moorings to non-members if moorings are available. The major reason no non-members currently maintain moorings in the two areas administered by Petitioner is economic -- two privately-administered mooring areas are adjacent to Petitioner's areas, and virtually all non-members who have moorings in the vicinity of Petitioner maintain their moorings at these privately-administered and sometimes less-expensive areas. Petitioner's areas and the private areas are currently undersubscribed.

Petitioner charges a fee to members for providing moorings, (i.e., mooring charges). Petitioner also charges tuition to students in its junior and adult sailing programs.

Section 527.6 of the Sales and Use Tax Regulations states, in part:

Storage of tangible personal property. [Tax Law, § 1105(c)(4)]

(b) Imposition.

Example 1: A person moors his boat in a slip, at a marina, during the summer months, and places it in storage during the winter months. The charges for mooring are not taxable....

Section 527.11 of the Sales and Use Tax Regulations states, in part:

Dues. [Tax Law, § 1105(f)(2)] (a) Imposition.

(1) A tax is imposed upon the dues paid to any social or athletic club in this State....

(b) Definitions. As used in this section, the following terms shall mean:

(2) Dues. (i) The term dues includes:

(b) any assessment, irrespective of the purpose for which made; and

(c) any charge for social or sports privileges or facilities.

Example 6: A club organized and operated for the promotion of yachting and other aquatic sports, which is a social and athletic club, owns and maintains docking and mooring facilities for the use of its members. The club makes a charge to each member using its facilities. The amount of the charge depends upon the size of the member's boat and the location of the docking and mooring facilities used. The charges made by the club for these facilities constitute taxable dues or membership fees.

In the instant matter, Petitioner's mooring charges to non-members tuition and charges to non-members for sailing instructions are not subject to sales or use tax. Section 527.6 of the Regulations, Example 1, provides that mooring charges are not taxable. Furthermore, since sailing instructions are considered to be educational and participation in a sport, the tuition charges to non-members for sailing instructions are also not subject to sales or use tax.

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However, Petitioner's charges to its members for mooring facilities and for sailing instructions are considered to be charges for dues in accordance with Section 527.11(b)(2)(b) and (c) and Example 6 of the Sales and Use Tax Regulations, and, accordingly, are subject to the sales tax imposed upon the dues paid to a social or athletic club in accordance with Section 1105(f)(2) of the Tax Law.

DATED: May 3, 1994

/s/
PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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