

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

TSB-A-94 (45)S
Sales Tax
September 28, 1994

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S940718A

On July 18, 1994 a Petitioner for Advisory Opinion was received from Dapolito & Company, CPA's P.C, 2234 Jackson Avenue, Seaford, New York 11783.

The issue raised by Petitioner, Dapolito & Company, CPA's P.C., is whether a social and athletic club can purchase lockers without the payment of sales tax, as purchases for resale, where the club charges a fee to its members for the use of the lockers.

The corporation in issue is a social and athletic club within the meaning of Section 501(c) of the Internal Revenue Code. The corporation functions as a social and athletic club as defined under Section 1101(d)(13) of the Tax Law and Sections 527.11(b)(5), (6), and (7) of the Sales and Use Tax Regulations. The membership of the organization controls its activities through the elected Board of Governors and committees.

The club purchased and installed new lockers in the locker room of its newly refurbished clubhouse. These lockers are not permanently attached to the structure.

The members of the club are billed a locker rental fee for use of the lockers. These fees are not mandatory and are based solely upon whether the member requests the use and takes possession of a locker. When the locker fees are billed to the members, the club also bills them for sales tax.

Section 1105(c)(4) of the Tax Law imposes sales tax upon "[S]toring all tangible personal property not held for sale in the regular course of business and the rental of safe deposit boxes or similar space".

Section 1105(f)(2) of the Tax Law imposes sales tax upon "[T]he dues paid to any social or athletic club in this state...".

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: (a) any dues or membership fee; (b) any assessment, irrespective of the purpose for which made; and (c) any charge for social or sports privileges or facilities.

In the instant case the charges by the club to its members for the use of the lockers are taxable under Section 1105(f)(2) of the Tax Law and Section 527.11 of the Sales and Use Tax Regulations as dues, and not as the rental of tangible personal property which would be taxable under Section 1105(a) of the Tax Law or the storage of tangible personal property which would be taxable under Section 1105(c)(4) of the Tax Law.

Since there is no provision in Section 1105(f)(2) of the Tax Law which provides for a resale exception from the payment of sales tax, therefore the club may not purchase the lockers in question without the payment of sales tax.

It is further noted even if the provisions of Section 1105(f)(2) of the Tax Law were not applicable, that since there is no provision in Section 1105(c)(4) which provides for a resale exception from the payment of sales tax, the club could not purchase the lockers in question without the payment of sales tax since the rental of the lockers is considered to be a charge for the storage of tangible personal property. American Locker Co. v Gallman, 38 AD2d 105, affd 32 NY2d 175.

DATED: September 28, 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.