

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

TSB-A-94 (56)S
Sales Tax
December 27, 1994

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S940809A

On August 9, 1994, a Petition for Advisory Opinion was received from Gregory J. Cicero, 35 Locust Avenue, Staten Island, New York 10306.

The issue raised by Petitioner, Gregory J. Cicero, is whether the dues paid by members of a homeowners association to fund operating expenses and capital improvements are subject to sales tax when the association does not provide recreational facilities.

Petitioner's client is a homeowner association consisting of 108 families. Dues paid by members of the homeowner association fund operating expenses and capital improvements.

The Homeowners Association does not provide any recreational facilities. There are no pools or tennis courts. There is a club house on the grounds which serves as the office of the association. In addition it is used to hold the annual meetings of the association. It is not used for any other purposes.

Section 1105(f)(2) of the Tax Law imposes sales tax upon the following:

(2) 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, and on the initiation fee alone, regardless of the amount of dues, if such initiation fee is in excess of ten dollars...

Section 527.11(b)(5) of the Sales and Use Tax Regulations provides, in part, 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". (emphasis added)

Section 527.11(b)(7) of the Sales and Use Tax Regulations provides, in part, as follows:

(7) Athletic club. (i) An athletic club is any club or organization which has a material purpose or activity the practice, participation in or promotion of any sports or athletics.

* * *

Example 30: 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.

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 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 or providing sports privileges and facilities. The fact that membership

TSB-A-94 (56)S
Sales Tax
December 27, 1994

is automatic upon purchase of real property has no effect on the association's status as a club. (emphasis added)

In the Matter of Merrick Estates Civic Association, Inc. v. State Tax Commission, 65 AD2d 669, the Court held that where residents of a particular residential section formed a corporation in order to construct a community swimming pool and related facilities, where membership was limited to homeowners living in defined residential sections, that the use of the facilities was deemed "social" and, thus, sales tax should be imposed upon dues paid to a social club. (emphasis added)

In the instant case since the homeowner association does not provide any recreational facilities, it cannot be considered to be a social and athletic club in accordance with Section 1105(f)(2) of the Tax Law and Sections 527.11(b)(5) and 527.11(b)(7) of the Sales and Use Tax Regulations. Accordingly no portion of the dues paid by members of the homeowners association to fund operating expenses and capital improvements are subject to the imposition of sales tax.

DATED: December 27, 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.