

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

TSB-A-97(3)S
Sales Tax

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S961105B

On November 5, 1996, the Department of Taxation and Finance received a Petition for Advisory Opinion from Oakwood Beach Association, Inc., c/o Henry E. Green, President, 1010 Woodoak Drive, Baldwin, NY 11510.

The issue raised by Petitioner, Oakwood Beach Association, Inc., is whether the dues and initiation fees paid by members of the association as of December 1, 1995, are exempt from sales tax pursuant to Section 1105(f)(2)(ii) of the Tax Law.

Petitioner submits the following facts as the basis for this Advisory Opinion.

Petitioner is a membership corporation which owns a private beach and park area located in Baldwin Harbor in Nassau County, Long Island, New York. Petitioner was incorporated in New York State on October 23, 1961, for the purpose of taking title to a parcel of beach land that was dedicated for community usage as part of the development plans filed with the Nassau County Clerk by Strow & Green Associates and Waterview at Merrick, Inc. Petitioner submitted copies of the two deeds by which Strow & Green Associates and Waterview at Merrick, Inc. conveyed the property to Petitioner.

Both deeds contain somewhat similar terminology restricting the usage of the deeded property. The Strow & Green Associates deed states that the premises are "to be used and maintained for the purposes of a private beach and park area for the use and benefit of all the residents and owners of lots shown on Maps of Oakwood at Baldwin, Section 1 and Addition No. 1." The Waterview at Merrick, Inc. deed states that the premises are "to be used and maintained for the sole and specific use and benefit of all of the residents and their respective families on the Maps of Oakwood at Baldwin, Sections 1 through 14, both inclusive, and Oakwood at Baldwin, Addition No. 1, for recreational and bathing beach purposes only."

The Waterview at Merrick, Inc. deed further states, "[t]he party of the second part covenants, by the acceptance of this deed, that the premises hereinabove described shall be perpetually used as a beach and for civic and recreational purposes for all residents of the development known as 'Oakwood at Baldwin', consisting of persons, including members of their immediate families, now or hereafter owning property or residing in homes now or hereafter located in lands contained in 'Maps of Oakwood at Baldwin, Sections 1 to 14, both inclusive, and Oakwood at Baldwin, Addition No. 1,' which maps were and are to be filed in the office of the Clerk of the County of Nassau."

Both deeds contain the following identical paragraph:

The rights of all such residents, as set forth above, shall be as fixed and determined by rules, regulations and by-laws of OAKWOOD BEACH ASSOCIATION, INC., the same to be applicable equally to all such residents; and membership therein shall be equally available to all such residents.

Petitioner completed construction of the beach club facilities in 1963, which became available for use by its members in 1964. From that year forward to the present time, Petitioner has continually operated as a private beach club available equally to all residents in the geographical area described in the deeds. The beach club facility is located in this geographical area, Oakwood at Baldwin, and membership in Petitioner is limited to residents of this geographical area.

There are presently approximately 660 homes located in the geographical area. The operations of the beach club are funded almost exclusively by dues and assessments paid equally by all active annual members. A very small percentage of the beach club's revenues are received from charges to non-resident guests and interest from such funds as may be available for temporary investment from time to time.

In order to be a member of Petitioner, an eligible resident must pay an initiation fee, or meet whatever the then current membership requirements may be as set forth in Petitioner's rules, regulations or by-laws. Such member then receives a certificate indicating that he or she owns one share of stock in Petitioner. All members who are current on their dues payments have equal voting rights.

The physical facilities of Petitioner consist of a large swimming pool and a kiddie pool and a building used by a food concessionaire which also has restrooms, a first aid room which is also used by lifeguards and other employees of Petitioner, and a storage area for beach chairs, lounges, etc. There are also basketball hoops, a volleyball court, a table tennis table, card tables and chairs, lounge chairs, a sand box for small children, and a covered area with picnic tables. Petitioner is open on a seasonal basis from mid-June through Labor Day each year, seven days a week, from 9:00 A.M. to 7:00 P.M.

Members' dues are charged and paid on an annual basis, and dues are required to be fully paid prior to the opening date of the beach club each year. Current dues are \$675 per year.

Effective December 1, 1995, Section 1105(f) of the Tax Law was amended to provide an exclusion from sales tax, under certain conditions, for dues and initiation fees paid to homeowners associations that provide social or athletic facilities to members.

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

(i) 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. Where the tax on dues applies to any such social or athletic club, the tax shall be paid by all members, other than honorary 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. In the case of a life membership, the tax shall be upon the amount paid as life membership dues, however, a life member, other than an honorary member, paying an annual sales tax, based on the dues of an active annual member, shall continue such payments until the total amount of such tax paid is equal to the amount of tax that would have otherwise been due had the tax been imposed at the time such paid life membership has been purchased and at the then applicable rate.

(ii) Dues and initiation fees paid to the following shall not be subject to the tax imposed by this paragraph:

(A) A fraternal society, order or association operating under the lodge system;

(B) Any fraternal association of students of a college or university;

(C) A homeowners association. For purposes of this subparagraph, a homeowners association is an association (including a cooperative housing or apartment corporation) (I) the membership of which is comprised exclusively of owners or residents of residential dwelling units, including owners of units in a condominium, and including shareholders in a cooperative housing or apartment corporation, where such units are located in a defined geographical area such as a housing development or subdivision and (II) which operates social or athletic facilities located in such area for use (whether or not exclusive) by such owners or residents. (emphasis added)

In the instant case, Petitioner operates a beach club facility consisting of a large swimming pool, a kiddie pool, a basketball hoop, a volleyball court, a table tennis table and a card table and chairs for the approximately 660 homeowners in the development known as Oakwood at Baldwin. The beach club facility is located in this development and membership in Petitioner is limited to residents of this development. Members' dues are charged and paid on an annual basis and dues are required to be fully paid prior to the opening date of the beach club each year. The current dues are \$675 per year. Effective December 1, 1995, Section 1105(f) of the Tax Law was amended to provide an exclusion from sales tax, under certain conditions, for dues and initiation fees

TSB-A-97(3)S
Sales Tax

paid to homeowners associations that provide social or athletic facilities to members. Accordingly, as of December 1, 1995, the dues and initiation fees paid by members for membership in Petitioner are no longer subject to State and local sales taxes.

DATED: January 30, 1997

/s/
John W. Bartlett
Deputy Director
Technical Services Bureau

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