

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

TSB-A-97(23)S
Sales Tax

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S970124B

On January 24, 1997, the Department of Taxation and Finance received a Petition for Advisory Opinion from the Lafayette Golf & Country Club, L.L.C., 4480 Lafayette Road, Jamesville, New York 13078.

The issue raised by Petitioner, Lafayette Golf & Country Club, is whether dues paid by its members are subject to sales tax under section 1105(f)(2) of the Tax Law.

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

Petitioner is a limited liability company whose purpose is to own and operate a golf course and country club. Petitioner will accept membership from the general public on a first come first served basis and will provide its members with the use of the golf course, swimming pool, club house and a restaurant and bar. Petitioner is owned by 69 equity owners. It is anticipated that most of the owners will be dues paying members in Petitioner, though there is no requirement that equity owners be members. Similarly, there is no requirement that a member be an equity owner of Petitioner in order to make use of the facilities. Nonequity members have no interest in any of the assets of the Petitioner.

Under the operating agreement for Petitioner, a nine member Board of Managers oversees all of the day to day operations of the facilities, including the social and athletic activities conducted at the facilities. The Board of Managers are elected by the equity owners and must be equity owners themselves. Nonequity members have no vote in the election of the Board of Managers.

Membership is available on an annual or seasonal basis and such memberships are sold on a first come first served basis. The Board of Managers does reserve the right to restrict membership based solely upon the size of the facilities and the possibility of overcrowding. Petitioner does not restrict its membership by geographic area, income, race, religion, or any other means. Petitioner has chosen to use the word "club" and "member" as a means of marketing interest in its facilities.

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

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 control 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 supplied)

In Cobleskill Golf and Country Club, Inc., Adv Op Comm T&F, March 30, 1994, TSB-A-94(13)S, it was held that since members in Petitioner held no proprietary rights, had no control over its activities or management, membership was not restricted, and the word "club" as used in Petitioner's name was used as a marketing device pursuant to Section 527.11(b)(5) of the Sales and Use Tax Regulations, the dues paid by members of the Cobleskill Golf & Country Club were not subject to sales tax. See also Antlers Country Club, Inc., Dec Tax App Trib, November 19, 1992, TSB-D-92(79)S.

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Since the pertinent facts as presented by Petitioner are virtually identical to those presented in Cobleskill Golf & Country Club, supra, the dues paid to Petitioner will likewise not be subject to sales tax.

DATED: April 17, 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.