

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

TSB-A-97(68)S
Sales Tax

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S970818A

On August 18, 1997, a Petition for Advisory Opinion was received from Community Center of Smallwood, Inc., Box #56, Smallwood, New York 12778.

The issue raised by Petitioner, Community Center of Smallwood, Inc., is whether its organization's dues are excluded from sales tax under the provisions of Section 1105(f)(2)(ii)(C) of the Tax Law as dues paid to a homeowners association.

Petitioner submits the following facts.

Petitioner was formed for the purpose of cultivating and promoting a friendly spirit of cooperation and the development of the social and recreational interests of the members of the community. Conditions of membership in Petitioner's organization are that the member own a home in Smallwood, own a share of Petitioner's stock, and pay annual dues to remain in good standing. Petitioner's social and athletic facilities are for use by owners and their guests only.

Tax Law

Section 1105(f)(2)(ii) of the Tax Law provides, in part:

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

* * *

(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.

Opinion

In this case, Petitioner's membership consists exclusively of owners or residents of residential dwelling units within a defined geographical area (Smallwood, New York). Petitioner's social and athletic facilities are within the area mentioned above and may only be used by homeowners and their guests. Petitioner, therefore, qualifies as a homeowners association for purposes of Section 1105(f)(2)(ii)(C) of the Tax Law. Accordingly, the dues paid by members of the Petitioner are not subject to sales tax.

DATED: October 28, 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.