

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

TSB-A-97(80)S
Sales Tax

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S970613A

On June 13, 1997, the Department of Taxation and Finance received a Petition for Advisory Opinion from Binghamton Boating Club, Inc., c/o James W. Jephson, 1300 Seymour Road, Vestal, NY 13850.

The issue raised by Petitioner, Binghamton Boating Club, Inc., is whether the membership dues and initiation fees paid by members for membership in Petitioner are subject to State and local sales taxes.

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

Petitioner currently consists of fifty-five member families which share a common interest in promoting safe and recreational boating activities. Fishing is one of the primary recreational boating activities which is enjoyed by nearly all the member families in Petitioner. Members' boats range from 14' aluminum boats to 21' runabout pleasure boats.

Petitioner is run by a Board of Directors which meets at least eight times a year. Petitioner has an annual meeting for the purpose of electing officers and directors. In addition, Petitioner typically holds general meetings for all of its members on a bi-monthly basis.

Petitioner owns property on the west shore of Seneca Lake near Dresden, New York where nearly all of its boating activities are held. This property contains campsites, a boat launch and docking facilities. There is also a clubhouse on the property which serves as a meeting room and, in the winter, a boat storage facility. The clubhouse contains restrooms, but no restaurant or bar. All of the boating and fishing activities are recreational only. Petitioner does not sponsor any fishing or boating tournaments or any other type of contests. Petitioner typically holds two barbecues over the summer months which are intended for members and their guests only. They are not intended to be fund raisers and are not open to the general public.

Petitioner's corporate purposes are set forth in its Certificate of Incorporation as follows:

2(A). The purpose of this organization is to conduct, operate and maintain an organization exclusively for pleasure, recreational and other non-profitable purposes within the intent and meaning of Section 501(c)(7) of the Internal Revenue Code of 1954 (or the corresponding provision of any future United States Internal Revenue Law), and in furtherance of such purposes:

- (a) To enjoy the fellowship and personal contact among persons interested in family boating and camping activities.
- (b) To encourage and promote safe boating.

(c) To arrange for, promote and sponsor meetings and gatherings of persons interested in boating and recreational equipment and facilities.

(d) To provide and improve camping and boating facilities for the members of the organization.

(e) To collect and distribute information and data in reference to boating.

Petitioner charges its members an initiation fee of \$350.00, and annual dues of \$300.00.

Applicable Law and Regulations

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

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, except that the tax shall not apply to a fraternal society, order or association operating under the lodge system or any fraternal association of students of a college or university. 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.

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

(6) Social club. A social club is any club or organization which has a material purpose or activity of arranging periodic dances, dinners, meetings or other functions affording its members an opportunity of congregating for social interrelationship.

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

Opinion

Petitioner currently consists of fifty-five member families which share a common interest in promoting safe and recreational boating activities. Fishing is one of the primary recreational boating activities which is enjoyed by nearly all of Petitioner's member families. All of the boating and fishing activities are recreational only. Petitioner does not sponsor any fishing or boating tournaments nor any other type of contests. Petitioner typically holds two barbecues over the summer months which are intended for members and their guests only.

A material purpose or activity of Petitioner is not the arranging of periodic dances, dinners, meetings or other functions to afford its members an opportunity of congregating for social interrelationship, nor is it the practice, participation in or promotion of any sports or athletics. Accordingly, Petitioner is not a social or athletic club, and its dues and initiation fees, therefore, are not subject to sales tax.

DATED: December 18, 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.