

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

TSB-A-97(81)S
Sales Tax

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S970715B

On July 15, 1997, a Petition for Advisory Opinion was received from Smithtown Bay Yacht Club, Inc., P.O. Box 562, Smithtown, New York 11787.

The issue raised by Petitioner, Smithtown Bay Yacht Club, Inc., is whether dues charged to the club membership are subject to sales tax.

Petitioner submits the following facts.

Petitioner is a closed/limited membership corporation. The object of Petitioner's club, as stated in its Constitution and By-Laws, is to promote pleasure boating in all its forms and the science of seamanship and navigation, to further better boating in local waters, and to provide and maintain a suitable club house and anchorage for the use and recreation of its members. Petitioner's membership is limited to 150 members and is closed to the public. Petitioner's members own the property where the marina and building are built. The marina contains 112 boat slips, and members' boats range from 23' to 35' in length, and from 8' to 13'3" in width. Petitioner's clubhouse includes a restaurant and bar which serves members only and remains open until midnight.

Petitioner's Constitution provides for officers and a Board of Governors to run the club. The officers and Board of Governors are elected by club members.

Article VI of Petitioner's Constitution, entitled "Committees," provides for various committees to be set up with specific functions to operate the club, made up of the members of the club. Among the committees established are the Membership Committee (consisting of the Board of Governors) and the Entertainment Committee. Section 5 of such article provides that the Entertainment Committee will provide and take charge of all entertainment given by the club with the exception of Special Affairs as approved by the Board of Governors.

Article IX of the Constitution provides that new members must be proposed in writing by four current members. A new member's application must be submitted to the Secretary of the club ten days prior to the meeting of the Board of Governors, and afterwards the application is given to the Membership Committee for review.

Article XII of the Constitution, entitled "Fees and Dues," Section 4, provides:

All members will be assessed a prescribed amount as stipulated in the By-Laws each year, payable on the 1st of November each year. This money may be used to buy food and drink at the Club House during the period between Memorial Day through Labor Day, excluding food served at Special Affairs and Entertainment functions held during this period (i.e., Steak Barbecue, Chicken Barbecue).

The initiation fee for Petitioner's club is \$600.00. The amount of the club dues is \$300.00 per member plus a \$200.00 assessment charged annually. The \$300.00 goes toward the costs of operations. The \$200.00 assessment charges are based on the capital improvements made to the club facilities which are being paid off over a twenty year period.

Applicable Law and Regulations

Section 1101(d)(6) of the Tax Law defines dues as, "[a]ny dues or membership fee including any assessment, irrespective of the purpose for which made, and any charges for social or sports privileges or facilities, . . . "

Section 1101(d)(13) of the Tax Law defines social or athletic club as, "[a]ny club or organization of which a material purpose or activity is social or athletic."

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

(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, . . .

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

Definitions. As used in this section, the following terms shall mean:

* * *

(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.

(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.

(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.

Opinion

Petitioner is formally organized with a Board of Governors, individual officers and specific committees which are organized to provide various functions on behalf of the club membership, such as the Membership Committee (consisting of the Board of Governors) and the Entertainment Committee. The committees are composed of club members. New members must be proposed in writing by four current members. A new member's application must be submitted to the Secretary of the Club ten days prior to the meeting of the Board of Governors, and afterwards the application is given to the Membership Committee for review. The Entertainment Committee is in charge of all entertainment given by the club, with a few exceptions. This is a club organized and operated by the club's membership. Accordingly, Petitioner is a club as defined in Section 527.11(b)(5) of the Sales and Use Tax Regulations.

Petitioner also meets the qualifications of a social club as defined in Section 527.11(b)(6) of the Sales and Use Tax Regulations. As one of its stated purposes, Petitioner provides its membership the opportunity to congregate at the club house for food and drink during the period between Memorial Day and Labor Day. Petitioner's Constitution provides for special functions such as the Chicken Barbeque and the Steak Barbeque, and establishes an Entertainment Committee to provide entertainment for club members. A material purpose, therefore, of Petitioner is to give its members opportunities for social activities.

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The initiation fee to join Petitioner's club, along with its dues and assessment, are in excess of ten dollars per year.

Accordingly, Petitioner is a social or athletic club for purposes of Section 1105(f)(2)(i) of the Tax Law and the charges to its club members are subject to sales tax. (See Section 1101(d)(6) of the Tax Law).

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.