

New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Technical Services Division

TSB-A-02(29)S
Sales Tax
July 12, 2002

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S010612A

On June 12, 2001 the Department of Taxation and Finance received a Petition for Advisory Opinion from Rochester Curling Club, Inc., 71 Deep Rock Road, Rochester, NY 14624.

The issue raised by Petitioner, Rochester Curling Club, Inc., is whether the organization's change in status from a social/athletic club to an exempt organization affects the taxability of its membership dues.

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

Petitioner is an association of curlers that incorporated in 1961 and have been curling together since that time at their own facility. On April 7, 2000, Petitioner amended its Certificate of Incorporation to reflect a change in its purpose and activities. Petitioner conducts training programs for children, junior curlers and adult education classes. Petitioner will also hold competitions for mural and intermural teams, ultimately leading to national and international competitions, as well as tryouts to compete in the World Olympics.

Petitioner received an advance ruling from the Internal Revenue Service on August 1, 2000, indicating that it is exempt from federal tax under Section 501(c)(3) of the Internal Revenue Code, based on the additional activities described above. Prior to August 1, 2000, Petitioner was exempt from federal tax under Section 501(c)(7) of the Internal Revenue Code as a social or athletic club, and collected the sales tax imposed on membership dues by Section 1105(f)(2) of the Tax Law.

Petitioner has applied for and received from the New York State Department of Taxation and Finance exempt status under Section 1116(a)(4) of the Tax Law based on the advance ruling.

Applicable Law and Regulations

Section 1101(d) of the Tax Law provides, in part:

When used in this article for purposes of the tax imposed under subdivision (f) of section eleven hundred five, the following terms shall mean:

* * *

(3) Amusement charge. Any admission charge, dues or charge of roof garden, cabaret or other similar place.

* * *

(6) Dues. Any dues or membership fee including any assessment, irrespective of the purpose for which made, and any charges for social or sports privileges or facilities, except charges for sports privileges or facilities offered to members' guests which would otherwise be exempt if paid directly by such guests.

* * *

(13) Social or athletic club. Any club or organization of which a material purpose or activity is social or athletic.

Section 1105(f) of the Tax Law imposes sales tax, in part, on:

(2)(i) The dues paid to any social or athletic club in this state if the dues . . . 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 1116 of the Tax Law provides, in part:

(a) Except as otherwise provided in this section, any sale or amusement charge by or to any of the following or any use or occupancy by any of the following shall not be subject to the sales and compensating use taxes imposed under this article:

* * *

(4) Any corporation, association, trust, or community chest, fund or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals. . . .

* * *

(b) Nothing in this section shall exempt:

(1) retail sales of tangible personal property by any shop or store operated by an organization described in paragraph (4), paragraph (5) or paragraph (6) of subdivision (a) of this section;

(2) sales of food or drink in or by a restaurant, tavern or other establishment operated by an organization described in paragraph (1), paragraph (4), paragraph (5) or paragraph (6) of subdivision (a) of this section, other than sales exempt under paragraph (ii) of subdivision (d) of section eleven hundred five, from the taxes imposed hereunder, unless the purchaser is an organization exempt under this section;

(3) sales of the service of providing parking, garaging or storing for motor vehicles by an organization described in paragraph (4) or paragraph (5) of subdivision (a) of this section operating a garage . . . parking lot or other place of business engaged in providing parking, garaging or storing for motor vehicles;

* * *

(d)(1) Except as provided in paragraph (2) of this subdivision, any admissions all of the proceeds of which inure exclusively to the benefit of the following organizations shall not be subject to any of the taxes imposed under subdivision (f) of section eleven hundred five:

(A) an organization described in paragraph (4), (5) or (6) of subdivision (a) of this section;

(2) The exemption provided under paragraph (1) of this subdivision shall not apply in the case of admissions to:

(A) Any athletic game or exhibition unless the proceeds shall inure exclusively to the benefit of elementary or secondary schools or unless in the case of an athletic game between two elementary or secondary schools, the entire gross proceeds from such game shall inure to the benefit of one or more organizations described in paragraph (4) of subdivision (a) of this section;

* * *

(f) (1) For purposes of paragraph four of subdivision (a) of this section, in the case of a qualified amateur sports organization (A) the requirement of such paragraph that no part of its activities involve the provision of athletic facilities or equipment shall not apply, and (B) such organization shall not fail to meet the requirement of such paragraph merely because its membership is local or regional in nature.

(2) For purposes of this subdivision, the term "qualified amateur sports organization" means any organization organized and operated exclusively to foster

national or international amateur sports competition if such organization is also organized and operated primarily to conduct national or international competition in sports or to support and develop amateur athletes for national or international competition in sports.

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

(a) *Imposition.* (1) A tax is imposed upon 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 \$10 per year.

* * *

(b) *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.

* * *

(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.

Section 529.7 of the Sales and Use Tax Regulations provides, in part:

(a) *General.* (1) Any corporation, association, trust, or community chest, fund or foundation, organized and operated exclusively for religious, charitable, scientific,

testing for public safety, literary or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment) . . . In addition, such organizations may, except under the circumstances described in subdivision (i) of this section, make sales without collecting the sales or use tax.

(2) An organization is not exempt from tax because it is organized and operated as a nonprofit organization or because it appears to meet the requirements of this section. In order to establish its exempt status, it is necessary to file a completed application as set forth in subdivision (f) of this section and prove that the organization meets the statutory requirements.

* * *

(b) Qualifications. (1) In order to qualify for exemption, an organization must be formally organized. An organization will not be considered formally organized unless it has an organizing document defining its purposes and activities and a code of regulations describing how it will function and select the officers empowered to act for it. . . .

* * *

(2) In addition to the formal organization requirement, an organization must prove that it is both organized and operated exclusively for one or more of the purposes specified in subdivision (e) of this section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

(c) *Organizational test.* (1) *General.* The organizational test relates solely to the provisions of the organizing documents.

(i) An organization is organized exclusively for one or more exempt purposes only if its organizing documents:

(a) limit the purposes of such organization to one or more exempt purposes; and

(b) do not expressly empower the organization to participate, other than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

(ii) In no case will an organization be considered to be organized exclusively for one or more exempt purposes, if, by the terms of its organizing documents, the

purposes for which such organization is created are broader than the purposes specified in section 1116(a)(4) of the Tax Law. . . .

* * *

(d) *Operational test.* (1) General. The operational test relates solely to an organization's activities.

(2) Activities. An organization will be regarded as “operated exclusively” for one or more exempt purposes only if almost all of its activities accomplish one or more exempt purposes specified in section 1116(a)(4) of the Tax Law and described in subdivision (e) of this section. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

* * *

(e) *Exempt purposes.* (1) In order to be exempt from the sales and use tax as an organization described in section 1116(a)(4) of the Tax Law, an organization must be both organized and operated exclusively for one or more of the purposes listed in this subdivision.

* * *

(ii) Charitable. The term “charitable” includes: relief of the poor, distressed, or underprivileged; advancement of religion; advancement of education or science. . . .

* * *

(v) Educational shall mean the instruction or training of the individual for the purpose of improving or developing his capabilities or the instruction of the public on subjects useful to the individual and beneficial to the community. . . .

* * *

(viii) Fostering national or international amateur sports competition. Notwithstanding paragraph (a)(1) of this section, an organization that provides athletic facilities or equipment will qualify for exemption as an organization organized and operated exclusively to foster national or international amateur sports competition if it is a qualified amateur sports organization. If an organization is not a qualified amateur sports organization, it will not qualify for exemption as an organization organized and operated exclusively to foster national or international

amateur sports competition if it provides athletic facilities or equipment. For purposes of this subparagraph the term “qualified amateur sports organization” means any organization organized and operated exclusively to foster national or international amateur sports competition and which is also organized and operated primarily to conduct national or international competition in sports or to support and develop amateur athletes for national or international competition in sports. A qualified amateur sports organization shall not fail to meet the requirements of this subdivision merely because its membership is local or regional in nature. An organization provides athletic facilities or equipment if the organization permits the use of athletic facilities or equipment that it owns, or pays for, or otherwise assumes the cost of the use of athletic facilities or equipment owned by any other person, or reimburses amateur athletes for the cost of athletic facilities or equipment. The term “foster national or international amateur sports competition” refers to organizations that:

(a) prescribe rules and standards for competition in an amateur sport or represent the United States in an international body that prescribes such rules and standards;

(b) sponsor national championships or international competition in an amateur sport;

(c) sponsor local, regional and national competition to select participants in national championships or international competition in an amateur sport;

(d) provide security, ticket sales and similar administrative services at amateur sports competitions described in clauses (b) and (c) of this subparagraph;

(e) provide administrative, coaching and training services to amateur athletes;

(f) provide medical care and insurance to amateur athletes;

(g) conduct equipment research for the benefit of amateur athletes;

(h) disseminate information to amateur athletes; and

(i) provide financial assistance to amateur athletes, but only if such assistance does not affect the amateur status of athletes to whom it is provided.

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For purposes of clauses (e), (f) and (h) of this subparagraph, the term “amateur athletes” refers only to athletes who participate, or reasonably can be expected to participate, in national championships or international competition in an amateur sport.

(2) An organization is not organized or operated for one or more of the above exempt purposes unless it serves the public rather than a private interest. Thus, to meet the requirements of this subdivision, it is necessary for an organization to prove that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

(3) If an organization is organized and operated exclusively for an exempt purpose or purposes, exemption will be granted to such an organization regardless of which exempt purpose or purposes is specified in its application for exemption. For example, if an organization claims exemption on the ground that it is “educational,” exemption will not be denied if, in fact, it is “charitable.”

Opinion

Petitioner has established it is organized for exempt purposes and received an advance ruling under Section 501(c)(3) of the Internal Revenue Code. Having received an advance ruling from the Internal Revenue Service, Petitioner has established that it is organized for exempt purposes. Petitioner has also received certification from the Department of Taxation and Finance as an exempt organization under Section 1116(a)(4) of the Tax Law.

Section 1116(a) of the Tax Law provides, with certain exceptions not relevant in this case, that any sale or amusement charge by any of the organizations or government entities described in such Section 1116(a) is not subject to sales tax. The term “amusement charge” includes club dues. See Section 1101(d)(3) of the Tax Law. Accordingly, provided that Petitioner remains organized and operated exclusively for exempt purposes, in a manner qualifying for exemption under Section 1116(a)(4) of the Tax Law, membership dues charged by Petitioner, including charges to members for use of Petitioner’s facilities, are not subject to tax.

Should Petitioner’s exempt status change because it fails to meet the organizational or operational test for exempt status under Section 1116(a)(4) of the Tax Law, then such dues may be subject to tax under Section 1105(f)(2) of the Tax Law to the extent that Petitioner constitutes a social or athletic club.

It should be noted that although Petitioner may be an exempt organization under Section 1116(a)(4) of the Tax Law, sales of tangible personal property by a shop or store operated by Petitioner, and sales of food and drink by a restaurant, tavern or other establishment operated by

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Petitioner, as well as other transactions, may be subject to tax. See Section 1116 of the Tax Law. If Petitioner made taxable sales, it would be required to register under Section 1134 of the Tax Law and collect and remit the appropriate sales tax.

DATED: July 12, 2002

/s/
Jonathan Pessen
Tax Regulations Specialist IV
Technical Services Division

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