

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

TSB-A-02(45)S
Sales Tax
September 18, 2002

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S011204A

On December 4, 2001, the Department of Taxation and Finance received a Petition for Advisory Opinion from Heritage Hills Golf Club, 16 School Street, Rye, New York 10580. Petitioner, Heritage Hills Golf Club, submitted additional information with respect to the Petition on February 20, 2002 and April 26, 2002.

The issue raised by Petitioner is whether the fees charged for golf membership are subject to sales tax.

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

Petitioner is one of two golf courses owned and operated by North American Golf Properties, LLC (NAGP). NAGP is a for-profit privately owned business entity doing business as a New York limited liability company. The day-to-day operations of Petitioner are handled by the manager who is hired by NAGP. Petitioner is a private golf club, located within the Heritage Hills community of town houses. Neither Petitioner nor NAGP is affiliated with or has an interest in the Heritage Hills community.

Membership is open to the general public on a first-come, first-served basis and is limited solely by the capacity of the facilities. There are no residency requirements or priority or reserved memberships for residents of the community. The manager, under direction of NAGP, maintains sole control over the acceptance of new members.

Residents of the Heritage Hills community are offered a discounted membership fee. This distinction was established by the previous owner of the golf course, who was also the developer of the Heritage Hills community. Although the discount was offered as an incentive to prospective home buyers, Petitioner has simply maintained the distinction for purposes of good will within the community. Current membership includes residents and non-residents of the Heritage Hills community. Aside from the price differential, there are no other rights, privileges or priorities offered to resident members.

Members do not own a proprietary interest in Petitioner. Members do not participate in the management of Petitioner, the selection of the manager, the selection or approval of new members, and they do not control, plan or conduct the social or athletic activities of Petitioner.

There is a restaurant on the premises which is leased to a third party concessionaire and is open to the general public. Members do not have any priority rights or other benefits in regard to these facilities and are not required to spend a certain amount at these facilities.

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:

* * *

(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.

(7) Initiation fee. Any payment, contribution, or loan, required as a condition precedent to membership, whether or not such payment, contribution or loan is evidenced by a certificate of interest or indebtedness or share of stock, and irrespective of the person or organization to whom paid, contributed or loaned.

* * *

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

Section 1105(f)(2)(i) 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...."

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.

(2) A tax is imposed on the initiation fee paid to any social or athletic club, regardless of the amount of dues, if such initiation fee is in excess of \$10.

* * *

(b) Definitions: As used in this section, the following terms shall mean:

* * *

(2) Dues. (i) The term dues includes:

- (a) any dues or membership fee;
- (b) any assessment, irrespective of the purpose for which made; and
- (c) any charge for social or sports privileges or facilities.

* * *

(4) Initiation fee. Any payment, contribution or loan, required as a condition precedent to membership, whether or not such payment, contribution or loan is evidenced by a certificate of interest or indebtedness or share of stock, and irrespective of the person or organization to whom paid, contributed or loaned.

* * *

(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:

* * *

(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;

* * *

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.

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(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

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 the petitioner's golf and country club held no proprietary rights, had no control over its activities or management, and membership was not restricted, the dues paid by members were not subject to sales tax. See also Lafayette Golf & Country Club, L.L.C., Adv Op Comm T&F, April 17, 1997, TSB-A-97(23)S; and Antlers Country Club, Inc., Dec Tax App Trib, November 19, 1992, TSB-D-92(79)S.

Petitioner owns, operates and manages the golf facility described in this Petition. The members possess no proprietary rights in Petitioner, have no control over its social or athletic activities, and do not participate in the selection of members or management. Based on the foregoing, Petitioner is not a "social or athletic club" within the meaning of Section 1105(f)(2) of the Tax Law. Therefore, dues and initiation fees paid by its members are not subject to State and local sales taxes.

The fees charged to Petitioner's members are an admission to, for the use of, a sporting facility. Such fees are excluded from tax under Section 1105(f)(1) of the Tax Law as charges for "sporting activities in which such patron is to be a participant." Shanty Hollow Corporation v New York State Tax Commission, 111 AD2d 968.

DATED: September 18, 2002

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