

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

TSB-A-02(4)S
Sales Tax
April 3, 2002

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S010601A

On June 1, 2001, the Department of Taxation and Finance received a Petition for Advisory Opinion from Racquet Club at Old Westbury, 24 Quail Run, Old Westbury, New York 11568. Petitioner, Racquet Club at Old Westbury, provided additional information pertaining to the Petition on June 28, 2001.

The issue raised by Petitioner is whether amounts received for “land fund” deposits that are a prerequisite to membership in its club are subject to sales tax.

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

Petitioner is a not-for-profit corporation under Section 501(c)(7) of the Internal Revenue Code. Petitioner operates a country club which provides tennis facilities for its members. Petitioner’s new members are required to pay, in addition to dues, a “land fund” deposit which is returnable to the member, without interest, upon resigning from the club. Petitioner acknowledges for purposes of this Petition that it is a social or athletic club for purposes of Section 1105(f)(2) of the Tax Law and its dues are subject to sales tax.

Petitioner characterizes the land fund monies as security deposits. The monies are kept in a segregated account, are not commingled with other funds, and are not used by Petitioner. The interest earned on this account, however, goes into Petitioner’s general fund and is used for such purposes as paying taxes.

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. (Emphasis added)

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.

* * *

(b)(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. (Emphasis added)

Opinion

Section 1105(f)(2) of the Tax Law imposes tax on dues and initiation fees paid to a social or athletic club. In determining whether payments made by club members fall within the definition of dues or initiation fees, the nature of the payment and not the name by which it is designated is controlling. The payments made by Petitioner’s members for “land fund” deposits as a condition

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precedent to club membership are similar to country club membership deposits which are recognized, for federal income tax purposes, as being in the nature of loans in IRS Letter Rulings 9043002, June 21, 1990, and 9735002, May 5, 1997.

Any payment, contribution, or loan required as a condition precedent to club membership constitutes an initiation fee subject to tax under Section 1105(f)(2) of the Tax Law. See Section 1101(d)(7) of the Tax Law and Section 527.11(b)(4) of the Sales and Use Tax Regulations. See also Lawrence Wittlin, Adv Op St Tx Comm, December 28, 1980, TSB-H-80(259)S. Moreover, where payment of a security deposit is required as a condition precedent to membership in a social or athletic club such charge is subject to the tax imposed under Section 1105(f)(2). See Lancaster Country Club, Inc., Adv Op St Tx Comm, February 22, 1982, TSB-A-82(4)S.

Accordingly, since the land fund deposits are payments or loans required as a condition precedent to membership in Petitioner's club, they are subject to the imposition of sales tax under Section 1105(f)(2) of the Tax Law. This is so even if a member subsequently resigns from the club and Petitioner returns the member's deposit, since the transaction that created the tax liability has not been set aside or cancelled. See Lawrence Wittlin, *supra*.

DATED: April 3, 2002

/s/
Jonathan Pessen
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Technical Services Division

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