

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

TSB-A-02(8)S
Sales Tax
May 31, 2002

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S010221B

On February 21, 2001, the Department of Taxation and Finance received a Petition for Advisory Opinion from William R. Jehle, 35 DeVille Circle, Williamsville, New York, 14221-4408. Petitioner, William R. Jehle, provided additional information pertaining to the Petition on April 24, 2001 and on August 28, 2001.

The issue raised by Petitioner, William R. Jehle, is whether separate charges by a private ski club for annual, daily or hourly ski lift passes which entitles holders to the use of ski lifts on the club's slopes and trails are subject to the sales tax imposed upon dues paid by members to a social or athletic club.

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

Petitioner is an officer of a member owned, private, not-for-profit, New York State corporation (Corporation) which owns and operates a ski area south of Buffalo, NY. To join its private club, Corporation charges an initiation fee which represents ownership of the club's facilities and carries corporate voting rights. Corporation also charges annual dues for its members to maintain their membership, pay for newsletter mailings, administrative costs, badges, and private club functions such as the annual President's ball. Currently, the annual dues charged to members also pay for members' use of the ski lifts and skiing on the club's slopes and trails. The Corporation also assesses members for capital improvements. The assessments must be approved by the voting membership.

Corporation's skiing facilities are open to the public at all times that they are available to members. The public may purchase an annual lift pass, or a daily or hourly pass, for the use of the skiing facilities. Corporation may also provide a "package" of various passes. The members who own the private club may use the club's facilities for private functions at no charge when there is no skiing. Corporation currently collects 8% sales taxes on charges for initiation fees and dues. It does not collect tax on non-member ski lift passes.

Corporation would like to re-structure its dues and fee charges as follows:

- Initiation fees (which represent ownership of the club's real property and facilities and carry voting rights, etc., in Corporation) would continue to be charged in the current manner.
- Members would still be subject to annual dues to maintain their membership in Corporation, pay for newsletter mailing and administrative costs, badges, and private club functions such as the annual President's Ball.

- Members' use of the club's ski lifts and slopes and trails, which are currently included in the charge for annual dues, would be charged separately as an annual, daily or hourly ski lift pass, or as a package of various passes. As described above, non-members would also be able to purchase annual, daily or hourly ski lift passes, and packages. Members would be entitled to discounts on the ski lift passes and any other activities that are open to the public.
- Assessments for capital improvements (which must be approved by the voting membership) will still be charged to members.

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. (Emphasis added)

* * *

(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 the sales tax, in part, upon:

(1) Any admission charge where such admission charge is in excess of ten cents to or for the use of any place of amusement in the state . . . *except charges to a patron for admission to, or use of, facilities for sporting activities in which such patron is to be a participant.* . . . (Emphasis added)

* * *

(2)(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, 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. . . .

Section 527.10(d)(4) of the Sales and Use Tax Regulations provides, in part:

Charges to a patron to or for the use of sporting facilities or activities in which the patron is to be a participant are excluded from tax.

* * *

Example 7: A ski resort's charge for lift tickets is an exempt admission charge to a sporting facility in which the patron will be a participant. If the facility charges for the use of skis or other equipment, such charge is for the rental of tangible personal property which is subject to tax.

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.* (Emphasis added)

* * *

Example 5: A social club collects \$10 per year from each of its members as regular dues. Members are entitled to use the clubhouse facilities without payment of an additional charge. However, members who wish to use the

golf course may do so only upon payment of an additional charge. Since the golf course is a social or athletic club facility, any charge made by the club to a member for the use of the course constitutes dues. The fact that such charges are made upon the member's election to use the course is immaterial.

Example 6: A club organized and operated for the promotion of yachting and other aquatic sports, which is a social and athletic club, owns and maintains docking and mooring facilities for the use of its members. The club makes a charge to each member using its facilities. The amount of the charge depends upon the size of the member's boat and the location of the docking and mooring facilities used. The charges made by the club for these facilities constitute taxable dues or membership fees.

* * *

(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.

* * *

(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.

Example 29: Tennis, golf and boxing clubs, athletic or sports boating clubs, and any other organization for the practice or promotion of athletics or sports, are included within the meaning of athletic club or organization.

Opinion

Corporation proposes to restructure its dues and fee charges in order to permit members to purchase annual, daily or hourly ski lift passes separately from their regular annual club dues, in the

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same manner as non-members of Corporation. Charges for annual, daily or hourly ski lift passes, and packages of such passes, would be lower for members than for non-members.

Corporation is a member owned, private, not-for-profit, New York State corporation. Members have voting rights in Corporation's management and activities. Members may purchase ski lift passes at a lower price than that available to non-members by virtue of their membership in the club. These factors indicate that Corporation is a club for purposes of Section 1105(f)(2)(i) of the Tax Law. See Section 527.11(b)(5)(i) of the Sales and Use Tax Regulations. Given the recreational purposes for which Corporation was formed, Corporation is a social or athletic club for purposes of Section 1105(f)(2)(i) of the Tax Law. See Section 527.11(b)(7) of the Sales and Use Tax Regulations. Therefore, the dues paid by members for membership in Corporation are subject to sales tax under Section 1105(f)(2)(i) of the Tax Law. Such dues include annual dues or membership fees in excess of \$10.00 per year, any assessment, irrespective of the purpose for which made, and *any charge to members for social or sports privileges or facilities*. See Section 1101(d)(6) of the Tax Law and Section 527.11(b)(2)(i)(c) of the Sales and Use Tax Regulations. Therefore, charges for annual, daily or hourly ski lift passes sold to Corporation's members are considered to be dues under Section 1101(d)(6) of the Tax Law and such charges are subject to sales tax under Section 1105(f)(2)(i) of the Tax Law.

It should be noted that charges to non-members for admission to, or use of, facilities for sporting activities in which such non-member is to be a participant are not subject to sales tax. See Section 1105(f)(1) of the Tax Law and Section 527.10(d)(4) of the Sales and Use Tax Regulations. Corporation's charges to members for ski lift passes are taxable, however, regardless of the fact that similar charges to non-members are excluded from the tax. See Matter of N.R.C. Realty Corporation, State Tax Commission, November 28, 1980, TSB-H-81(12)S.

Accordingly, the dues restructuring plan proposed by Corporation does not result in a nontaxable charge to Corporation's members for ski lift passes.

DATED: May 31, 2002

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

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