

**New York State Department of Taxation and Finance
Office of Counsel
Advisory Opinion Unit**

TSB-A-11(33)S
Sales Tax
December 20, 2011

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S110830A

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED]. Petitioner asks whether the membership dues paid by the members are subject to sales tax. We conclude that membership dues paid for membership in the club are not subject to sales tax under Section 1105(f)(2) of the Tax Law.

Facts

Petitioner is the owner and operator of a golf course facility that includes an 18-hole course, a restaurant, a bar, and a pro-shop. Membership is open to the public and there are approximately 300 members. Petitioner does not restrict its membership as to geographic area, income, race, or religion. The only restriction on membership is the capacity of the golf course's facilities. A single social gathering is held for members by Petitioner at the beginning of each season and members are allowed to participate in all tournaments throughout the year.

Petitioner at all times retains sole control and authority over the use and operation of the facilities. The membership does not have any say, control, or rights over social functions, golf tournaments, or any other aspect of the facilities' operation. The membership does not participate in the selection or election of Petitioner's officers, directors, management, or employees or participate in the selection or acceptance of other members. Members possess no ownership or propriety interest in the Petitioner, and have no right to vote on any aspect of the Petitioner's business. Petitioner uses the term "member" as a marketing device to attract business.

Analysis

Tax Law section 1105(f)(2) 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." Tax Law section 1101(d)(6) defines dues as any "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 are otherwise exempt if paid directly by such guests." Sales and Use Tax Regulation section 527.11(b)(5) defines a club or organization as "any entity which is composed of persons associated for a common objective or common activities . . . Significant factors, any one of which may indicate that any 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.”

In *Antlers Country Club, Inc.*, Tax Appeals Tribunal (November 19, 1992), it was held that an entity was not a “club” because both control and property interest of the entity were held by the stockholders, who were not all members of the club. In the present case, Petitioner’s members possess no proprietary rights in the entity and have no control over its activities or management. Membership in the club is not restricted, other than by the capacity of the facility and the word “member” is used by Petitioner as a marketing device. Accordingly, Petitioner is not a “social or athletic club” within the meaning of section 1105(f)(2) of the Tax Law. *See* 20 NYCRR §527.11(b)(5). Therefore, membership dues paid for membership in the club are not subject to sales tax under Section 1105(f)(2) of the Tax Law.

DATED: December 20, 2011

/S/

DEBORAH R. LIEBMAN
Deputy Counsel

NOTE: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.