

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-A-82(16)S
Sales Tax
May 3, 1982

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S81117B

On November 17, 1981, a Petition for Advisory Opinion was received from Silver Point Beach Club, Inc., P.O. Box 367, Atlantic Beach, New York 11509.

The issue raised is whether receipts from the rental of the club's "cabanas" are subject to sales tax as "dues" within the meaning of section 1101(d)(6) of the Tax Law.

Petitioner is a beach club located at Atlantic Beach, New York. It makes available to its members beach facilities, a cafeteria, a restaurant, tennis courts and other facilities. Additionally, the club rents out cabanas to its members.

The club operates during the summer season. Individuals may apply for seasonal membership. A separate portion of the seasonal membership application form contains an application for rental of a cabana. Season members are not required to rent cabanas. Many do not. The charges for seasonal membership dues and for rental of cabanas are each separately stated on the application. Season members who rent cabanas are billed separately for membership dues and for cabana rental. Each member who rents a cabana is given exclusive possession of a specific cabana for the entire season.

The club has 833 cabanas of various sizes, 716 units with plumbing and 117 units without plumbing. All of the cabanas are permanent structures, constructed of wood and immovably attached to wood pilings driven into the ground. All cabanas have electrical power, and are furnished with various electrical equipment, including refrigerators. The cabanas supplied with plumbing are divided into small rooms; the cabanas without plumbing generally consist of a single room. The cabanas with plumbing are suitable for use as sleeping facilities and are so used by tenants. While it is possible to sleep in a cabana without plumbing, generally the tenants do not use them for this purpose.

Section 1105(f)(2) of the Tax Law imposes a sales tax on "the dues paid to any social or athletic club in this state" Section 1101(d)(6) of the Tax Law defines the term "dues" as: "Any dues or membership fee including any assessment, irrespective of the purpose for which made, and any charge 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." No sales tax is imposed in New York State on receipts from the rental of real property.

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The circumstance described in this Petition with regard to cabana units containing plumbing fixtures are in all essential respects identical to the circumstances considered in Matter of Breezy Point Surf Club, Inc. v. State Tax Commission, 67 A.D. 2d 760, 412 N.Y.S. 2d 464. In that case, the court held that receipts from the rental of cabanas are not dues paid to a social or athletic club but are, instead, receipts from the rental of real property and, thus, not subject to tax. The absence of plumbing fixtures from the 117 units without plumbing does not require a different result.

Accordingly, the receipts from the rental of cabanas by Petitioner, whether with or without plumbing, are receipts from the rental of real property and are not subject to sales tax.

DATED: April 15, 1982

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau