

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

TSB-A-88(31)S  
Sales Tax  
June 8, 1988

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S880226A

On February 26, 1988, a Petition for Advisory Opinion was received from Wallace Watson, Rd. #5, Box 23, Valatie, New York 12184.

The issues raised are (1) whether the EverGreen Country Club, Inc. is a social or athletic club within the meaning of § 1105(f)(2) of the Tax Law, (2) whether membership dues charged by EverGreen Country Club, Inc. are subject to sales tax, and, if not (3) whether Petitioner is entitled to a refund of sales taxes paid in 1987 and 1988.

Petitioner is a member of the EverGreen Country Club. EverGreen provides its members with the use of a golf course and swimming pool. These facilities are also available to non-members who pay a fee.

EverGreen Country Club, Inc. is owned and operated by Paul J. Roth. Members of the club do not participate in membership selection or management of the club, nor do they have a proprietary interest in the club.

Section 1105(f)(2) of the Tax Law imposes a 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 " The term "club" as defined in 20 NYCRR 527.11(b) (5) is as follows:

...any entity which is composed of persons associated for a common objective or common activities .... 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 ....

- (ii) A club ... does not exist merely because a business entity:
  - (a) charges for the use of facilities on an annual or seasonal basis ...;
  - (b) restricts the size of the membership solely because of the physical size of the facility ...;
  - (c) uses the word club or member as a marketing device;
  - (d) offers tournaments, leagues and social activities which are controlled solely by the management.

Example 14 therein states:

A tennis "club" which is owned by an individual provides tennis courts, showers, sauna and lockers. Members pay a seasonal fee to play tennis, any time during the season, without limitation. The club provides no other services and has a daily rate for nonmembers. Since the "club" does not restrict playing to members only and the "club" provides nothing but playing time for its members, charges are for season tickets to play tennis and not for the payment of dues. Therefore, this is not a club or organization. 20 NYCRR 527.11

Accordingly, since EverGreen Country Club, Inc. (1) does not allow member to participate in the operation or management of the club, (2) does not allow members to participate in the selection of future members, (3) does not offer its members a proprietary interest in the club, (4) does not provide tournaments, dances, elections, or committees, and (5) does not limit its membership as an attempt at exclusivity, it does not constitute a "social or athletic club" under section 1105(f)(2) of the Tax Law and, thus, membership dues are not subject to sales tax.

Pursuant to section 1139 of the Tax Law, "... the tax commission shall refund or credit any tax, penalty or interest erroneously ... paid if application therefor shall be filed ... within three years after the date when the tax was payable ... to the tax commission .... " Petitioner may claim a refund of sales tax paid in 1987 and 1988 pursuant to section 1139 of the Tax Law by filing a Form AU-11, Application for Credit or Refund of State and Local Sales and Use Tax.

DATED: June 8, 1988

s/FRANK J. PUCCIA  
Director  
Technical Services Bureau

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