

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

TSB-A-90(56)S
Sales Tax
November 12, 1990

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S901002A

On October 2, 1990 a Petition for Advisory Opinion was received from St. George's Golf & Country Club, Inc., P.O. Box AN, Stonybrook, New York 11790.

The issue raised by Petitioner, St. George's Golf & Country Club, Inc., is whether a finance charge for late payment of a member's account receivable balance is subject to sales tax.

Petitioner is an Internal Revenue Code 501(c)(7) social and athletic club. The club bills its members for dues, assessments, food and bar sales, guest fees, interclub charges and equipment rental fees.

Members with account receivable balances older than 30 days are billed a finance charge of 1 ½ % per month on the portion of the balance over 30 days old.

Section 1105(f)(2) 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, . . . 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 1101(d)(6) of the Tax Law provides that:

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.

Section 527.11(b)(2)(i) of the Sales and Use Tax Regulations provides in part that:

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.

* * *

Example 2: All members of a social club pay dues of \$30 per year. A penalty of \$1 is assessed on any member who fails to pay his dues promptly. The penalty is incurred and paid in that particular year by the member. The penalty is considered to be an increase in the amount of the member's dues or membership fees and is taxable as such.

Section 526.5(h)(1) of the Sales and Use Tax Regulations provides that:

Any charge for credit imposed by a vendor and paid by a purchaser in addition to the purchase price under a designation such as interest, service charge or finance charge is not deemed to be part of the sale price of tangible personal property or charge for services rendered. Such charges are consideration for the extension of credit and shall not be included in the receipt subject to sales tax. (For credit investigation charges in New York City, see Part 538 of this Chapter.)

Therefore in the instant case any penalties, late charges, finance charges or interest charges imposed upon the member for the late payment of his account receivable balance, which are retained by the Petitioner, are considered to be "dues" and as such are subject to sales tax, since such charges are considered to be assessments in accordance with Section 1101(d)(6) of the Tax Law and Sections 527.11(b)(2)(i)(b) and 527.11(b)(2)(i) Example 2 of said regulations. The provisions of Section 526.5(h)(1) of said regulations are not applicable to those charges which are considered to be dues under the aforesaid sections.

DATED: November 12, 1990

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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