

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

TSB-A-90(57)S
Sales Tax
December 24, 1990

STATE OF NEW YORK

COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S900912A

On September 12, 1990, a Petition for Advisory Opinion was received from St. George Operating and Improvement Co., PO Box AN, Stonybrook, New York 11790.

The issues raised by Petitioner, St. George Operating and Improvement Co., are whether Petitioner is required to be a registered vendor in connection with the sale of certain stocks and bonds and whether the statute of limitations set forth in Section 1147(b) of the Tax Law applies to the sales of said securities, where such purchases are required to be made in connection with obtaining membership in a club leasing property from Petitioner.

Petitioner owns a golf course, building and related facilities. Petitioner's property is leased to the St. George Country Club Inc. (hereinafter the "club"). Petitioner is a title holding company. It has no employees, it provides no services to the club nor has any other business activity. Substantially all of the shareholders in Petitioner are members of the club. The non-member shareholders are all former members. The club and Petitioner's directors and officers are members of the club. The club pays Petitioner a minimal annual rental of \$6,000.00.

The club requires all new members to buy shares of stock and a bond in Petitioner as a condition precedent to membership. The stock and the sales tax are billed by the club. The members execute separate checks, one made payable to Petitioner for the stock and one made payable to the club for the sales tax due on such stock purchase. The members accounts receivable are credited on the club's books upon receipt of the payments. The employees of the club maintain the stock transfer and bond records for Petitioner. The amount collected by the club for the stock purchase is paid over by the club to Petitioner. The sales tax collected by the club is retained by the club and reported on their sales tax return as initiation fees. Petitioner records the stock payments in its capital account.

Sales tax has not been collected on the bond sales or reported as initiation fees in the club's sales tax return. However, it is conceded that bonds required to be purchased as a condition precedent to membership are taxable as initiation fees.

Section 1105(f)(2) of the Tax Law imposes sales tax 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 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, . . .

Section 1101(d)(7) of the Tax Law defines an "initiation fee" as "[a]ny payment, contribution, or loan required as a condition precedent to membership, whether or not such payment, contribution or loan evidenced by a certificate of interest or indebtedness or share of stock, and irrespective of the person or organization to whom it is paid, contributed or loaned."

Section 1131(1) of the Tax Law states, in part, that a "[p]erson required to collect tax or person required to collect any tax imposed by this article shall include: every vendor of tangible personal property or services; every recipient of amusement charges; and every operator of a hotel. . ."

Section 526.11(a)(4) of the Sales and Use Tax Regulations provides in part that:

Persons required to collect tax includes:

* * *

(4) Every person who is the recipient of dues from members of a social or athletic club, organization or association.

* * *

Section 1147(b) of the Tax Law and Section 535.3 of the Sales and Use Tax Regulations provide that in general the statute of limitation for assessment of tax is three years from the date of the filing of a sales tax return. If a return has not been filed as required by the tax law, no time period limits assessment.

Accordingly the stocks and bonds sold by Petitioner as condition precedent to membership in the club are subject to the imposition of sales tax as initiation fees in the nature of dues in accordance with Section 1105(f)(2) and 1101(d)(7) of the Tax Law.

Since the Petitioner directly received the payment for the stocks and bonds from members of the club, it was a person required to collect the sales tax due on said securities in accordance with Section 1131 of the Tax Law and Section 526.11(a)(4) of the Sales and Use Tax Regulations. Petitioner is therefore required to be a registered vendor.

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Further, since Petitioner failed to file the required returns, pursuant to Section 1147(b) of the Tax Law and Section 535.3 of the Sales and Use Tax Regulations no time period limits assessments against Petitioner for taxes not collected and remitted by it on stock and bond sales.

DATED: December 24, 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.