

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

TSB-A-92 (74) S  
Sales Tax  
November 2, 1992

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S920804A

On August 4, 1992 a Petition for Advisory Opinion was received from Cobblestone Creek Country Club, Inc., 7979 Pittsford-Victor Road, Victor, NY 14564.

The issue raised by Petitioner, Cobblestone Creek Country Club, Inc., is whether fees and dues assessed to members and paid to Petitioner are subject to the sales tax imposed by Section 1105(f)(2) of the Tax Law.

Petitioner, hereinafter "the Club", was incorporated in the State of New York as a Type C not-for-profit corporation on April 3, 1990. The Club is part of the residential community development known as Cobblestone Creek, located in Victor, New York. The Club is a private, not-for-profit, country club in which membership is available by invitation only and is limited to resident owners in Cobblestone Creek and a limited number of persons outside of the Cobblestone Creek residential community.

The Club has opened and memberships have been sold. The Club has collected sales tax on all payments of membership contributions and monthly dues. Members of the Club have questioned whether sales tax applies to these payments.

The Club offers two classes of memberships, golf and social. A golf membership entitles an individual and his immediate family to use all of the golf, tennis, swimming and social facilities of the Club. A social membership entitles an individual and his immediate family to use the tennis, swimming and social facilities of the Club and further entitles the social member to a total of three rounds of golf per year at the golf course upon payment of a greens fee.

The Club obtains most of its revenues from membership contributions, annual dues and services provided to members (e.g., clubhouse concessions). A very small portion of its revenues comes from services provided to non-members (in connection with specific outings).

The Club's facilities (e.g., golf course, golf carts, pro shop, etc.) are currently owned by Vicwil Associates, a New York limited partnership and the developer of Cobblestone Creek (the "Developer"). The Developer operates these facilities as a private membership club whose members, upon admission and payment of a membership contribution and monthly dues, receive the benefits previously described. All Cobblestone Creek property owners have the opportunity to apply for Club membership.

The Developer has contracted to sell the facilities used by the Club (the "Club Facilities") to the Club. Pursuant to the terms of the Cobblestone Creek Country Club Facilities Purchase Agreement (the "Purchase Agreement"), until the Closing Date (as therein defined) which in any event shall be no later than January 1, 1999, the Developer will operate the Club Facilities and will

make those Facilities available to the members of the Club. The Purchase Agreement and the By-Laws of the Club call for a Board of Governors that will govern and administer the affairs and property of the Club and have exclusive authority to:

1. accept or reject applications for membership;
2. set membership contributions, dues, assessments and charges;
3. establish rules and regulations;
4. hire and terminate personnel; and
5. in general, control the management and operations of the Club and the Club Facilities.

Until the Closing Date, the Board of Governors is appointed by the Developer. The members of the Board serve solely on behalf of the Developer and they are not required to be Club members.

The Purchase Agreement and the By-Laws also create an advisory committee of members in the Club. This committee acts as a liaison between the Developer and the members of the Club. The committee makes non-binding recommendations to the Board of Governors, but has no right, duty or obligation to act on behalf of the members of the Club until the Closing Date.

If the holder of a resident or non-resident golf membership resigns from the Club, he or she will receive a payment equal to the greater of 75% of the membership contribution actually paid by the resigning member or 60% of the membership contribution then charged by the Club for the class and category of the resigning member's membership, but in no event shall the amount paid to the resigning member exceed the amount of the membership contribution actually paid by the resigning member. The By-Laws also allow the Club to recall and repurchase certificate golf memberships upon the giving of sufficient notice. If the Club repurchases a certificate membership, the certificate member will receive a portion of his or her membership contribution ranging from 100% in Year 2 to 10% in Year 5 and thereafter.

Section 1105(f)(2) of the Tax Law imposes sales tax upon "The dues paid to any social or athletic club in this state .... "

Section 527.11 of the Sales and Use Tax Regulations states, in part:

Dues. [Tax Law, §1105(f)(2)] (a) Imposition.

(1) A tax is imposed upon the dues paid to any social or athletic club in this State ...

\* \* \*

(b) Definitions. As used in this section, the following terms shall mean:

\* \* \*

(2) Dues. (i) 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.

\* \* \*

(5) Club or organization. (i) The phrase club or organization means any entity which is composed of persons associated for a common objective or common activities. Whether the organization is a membership corporation or association or business corporation or other legal type of organization is not relevant. 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. The organization structure may be formal or informal.

(ii) A club or organization does not exist merely because a business entity:

\* \* \*

(b) restricts the size of the membership solely because of the physical size of the facility. Any other type of restriction may be viewed as an attempt at exclusivity;

\* \* \*

Example 18: A club owned by an individual which attempts to restrict its membership by geographic area, income, race, religion or any other means, is a club or organization. However, a "club" owned by an individual which restricts its membership only because of the physical capacity of its facilities is not a club or organization.

In the instant case, the Club offers membership by invitation only and limits such membership to resident owners in Cobblestone Creek and to a limited number of persons outside of the Cobblestone Creek residential community.

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Since the Club attempts to restrict its membership, it is considered to be a “club or organization” in accordance with Section 527.11(b)(5), Example 18 of the Sales and Use Tax Regulations. This is true even though no members of the Club may currently be serving on the Club's Board of Directors, thereby creating an absence of membership control or possession of a proprietorship interest in the Club. Max Pollock, Adv Op St Tx Comm, November 18, 1983, TSB-A-83(48)S; International Business Machines Corporation, Adv Op St Tx Comm, April 30, 1985, TSB-A-85(9)S.

Accordingly the Club's charges to its members, whether in the form of fees or dues, fall within the definition of dues as defined under Section 527.11(b)(2)(i) of the Sales and Use Tax Regulations and are subject to the sales tax imposed under Section 1105(f)(2) of the Tax Law.

DATED: November 2, 1992

s/PAUL B. COBURN  
Deputy Director  
Taxpayer Services Division

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