

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

TSB-A-92 (78) S
Sales Tax
November 13, 1992

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S920908A

On September 8, 1992 a Petition for Advisory Opinion was received from Shelter Rock Tennis Club, Inc., Powerhouse Road, Manhasset, New York 11030.

The issues raised by Petitioner, Shelter Rock Tennis Club, Inc., are:

1. Whether Petitioner should collect sales tax on receipts from members for required purchases of stock of Searingtown Associates, Inc.
2. Whether members of Petitioner are entitled to a refund of the sales tax paid on the required purchase of stock of Searingtown Associates, Inc.
3. Whether members of Petitioner are entitled to a refund of the sales tax paid at the time their stock of Searingtown Associates, Inc. is redeemed.

Petitioner is a social and athletic club within the meaning of Section 501(c)(7) of the Internal Revenue Code. Petitioner also functions as a social and athletic club as defined under Sections 1101(d)(13) of the Tax Law and 527.11(b)(5), (6) and (7) of the Sales and Use Tax Regulations, in that the membership of this organization controls its activities through the elected Board of Governors and committees.

Searingtown Associates, Inc. is a title holding company that owns the land, buildings and other facilities occupied and used as a tennis club by Petitioner.

The members and former members (those awaiting redemption of their shares of stock) of Petitioner own all the outstanding stock in Searingtown Associates Inc.

As a condition precedent to membership in Petitioner a member must purchase a share of stock of Searingtown Associates Inc., in the amount of \$6,128.00 plus sales tax. This purchase price was arrived at by adding the amount of certain assessments imposed by the Board through the years, the most recent one being in 1988 for \$1,640.00 plus sales tax to cover major repairs to Petitioner's outdoor pool.

Petitioner collects sales tax from each member based on the price paid for the required purchase of stock of Searingtown Associates Inc. The sales tax is reported on and paid with the return filed by Petitioner.

A members' stock in Searingtown Associates, Inc. is redeemed when he resigns from Petitioner and a new member has paid for his required purchase of stock.

A member of Petitioner who is also a shareholder of Searingtown Associates Inc. applied to the Department of Taxation and Finance for a refund of the sales tax paid on a share of stock in Searingtown Associates, Inc. The member received a refund of the sales tax paid on the share of stock in Searingtown Associates, Inc. from the Department.

Section 1105(f)(2) of the Tax Law imposes a tax on "[t]he dues paid to any social or athletic club in this state"

Section 1101(d)(6) of the Tax Law defines "dues" as:

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 1101(d)(13) of the Tax Law defines the term "social or athletic club" as "[a]ny club or organization of which a material purpose or activity is social or athletic."

* * *

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 if the dues of an active annual member, exclusive of the initiation fee, are in excess of \$10 per year.

(2) A tax is imposed on the initiation fee be paid to any social or athletic club, regardless of the amount of dues, if such initiation fee is in excess of \$10.

(3) Where the tax applies to any social or athletic club, the tax shall be paid by all members thereof, regardless of the amount of their dues or initiation fee.

...

(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.

...

Example 4: A social club wishes to expand its clubhouse by adding a new dining room to it. In order to finance the construction, the club will assess each member \$100. The assessment is subject to tax as dues, regardless of the fact that the proceeds will be used for a capital improvement.

...

(4) Initiation fee. Any payment, contribution or loan, required as a condition precedent to membership, whether or not such payment, contribution or loan is evidenced by a certificate of interest or indebtedness or share of stock, and irrespective of the person or organization to whom paid, contributed or loaned.

Example 12: As a condition necessary for membership in a social club, an applicant is required to purchase a \$50 bond from the club. This purchase is an initiation fee subject to tax.

(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 organizational structure may be formal or informal.

(6) Social club. A social club is any club or organization which has a material purpose or activity of arranging periodic dances, dinners, meetings or other functions affording its members an opportunity of congregating for social interrelationship...

(7) Athletic club. (i) An athletic club is any club or organization which has as a material purpose or activity the practice, participation in or promotion of any sports or athletics

In the instant matter, Petitioner is considered to be a social and athletic club as defined under Section 1101(d)(13) of the Tax Law and Sections 527.11(b)(6) and (7) of the Sales and Use Tax Regulations.

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Since the purchase of a share of stock of Searingtown Associates Inc. is required as a condition precedent to membership, the receipts from such payments are considered to be both dues, as defined under Section 1101(d)(6) of the Tax Law and Section 527.11(b)(2) of the Sales and Use Tax Regulations, and an initiation fee as defined under Section 527.11(b)(4) of the Sales and Use Tax Regulations. Accordingly the receipt from the purchase of the share of stock of Searingtown Associates, Inc. is subject to the tax imposed under Section 1105(f)(2) of the Tax Law and Section 527.11(a) of the Sales and Use Tax Regulations.

Subsequent redemption of the share of stock of Searingtown Associates, Inc. will not entitle a member to a refund of the tax paid, because the transactions which necessitated the purchase of the stock and the creation of the members' tax liability have not been set aside or cancelled. Lawrence Wittlin, Adv Op St Tax Comm., December 15, 1980, TSB-H-80(259)S.

It is noted that the refund of sales tax issued to one of Petitioner's members for sales tax paid on a share of stock of Searingtown Associates, Inc. was issued erroneously.

DATED: November 13, 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.