

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

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Sales Tax
April 20, 1993

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO.S921123B

On November 23, 1992 a Petition for Advisory Opinion was received from The 1754 Alumni Club Ltd., d/b/a The Columbia Club of New York, 24 East 39th Street, New York, New York 10016.

The issues raised by Petitioner, The 1754 Alumni Club Ltd., d/b/a The Columbia Club of New York, are:

- (1) What is the proper manner of reporting and remitting sales tax with respect to annual membership fees collected by a social club and forwarded to another social club pursuant to a facilities sharing agreement.
- (2) What is the proper manner of reporting and remitting sales tax with respect to activity fees collected by a social club and forwarded to another social club that hosts the event and with which the first club shares facilities pursuant to a facilities sharing agreement.

Petitioner is a not for profit alumni social club which is exempt from federal income tax under section 501(c)(7) of the Internal Revenue Code. Petitioner's purpose is to provide social and recreational activities to its members. In furtherance of this purpose, Petitioner provides access to traditional club facilities and organizes a variety of social functions such as wine tastings, dances, and lecture series.

Petitioner does not maintain currently, and has never maintained, its own physical facilities. On November 1, 1990 Petitioner entered an agreement with the Williams Club of New York (the "Williams Club") to share the facilities of the Williams Club. Under the terms thereof, Petitioner's members are entitled to substantially the same membership privileges at the Williams Club as are Williams Club members and Petitioner is granted the use of certain office space. These membership privileges include access to the Williams Club's lodging, banquet and dining facilities as well as access to associated social and athletic clubs. In exchange for these rights and privileges Petitioner forwards approximately 60 percent of its membership fees to the Williams Club.

The facilities sharing agreement between Petitioner and The Williams Club states, in part:

4. Initially the Columbia Club will be responsible for collecting its members' dues. It is the intention of the Columbia Club to adjust its dues structure as quickly as feasible to that of the Williams Club. If operations under this agreement develop satisfactorily to both parties, the end point of such adjustment would be a dues structure parallel to or merged with that of the Williams Club.

The Williams Club will be responsible for collecting payments of Columbia members' house charges (including reciprocal club charges when introductions have been provided through the Williams Club) using the same procedures it employs to assure prompt and complete satisfaction of all other members' financial obligations. Separately identified monthly billing statements (eg "Columbia Club of NY at the Williams Club") will be used whenever feasible.

Petitioner holds substantially all of its social functions at the Williams Club and generally compensates the Williams Club for the use of its facilities on a per function basis.

Since September, 1991 it has been Petitioner's practice to collect New York sales tax on its membership fees, remit the sales tax due thereon to the State and subsequently forward a portion of the fees to the Williams Club as described above. Prior to that time, the Petitioner included the appropriate sales tax with the fees forwarded to the Williams Club and the Williams Club remitted such tax to the State.

With respect to the social functions organized by Petitioner and held at the Williams Club Petitioner has generally paid all sales tax applicable to the Williams Club's provision of facilities, food, beverages, etc. and the Williams Club has remitted the tax to the State. Petitioner charged its members an activity fee to attend these functions which was based on and generally equaled its compensation to the Williams Club (including all applicable sales tax paid by Petitioner). Petitioner generally has not retained any profit from the activities nor has it collected any sales tax independent of that charged by the Williams Club.

Section 1101 of the Tax Law states, in part:

Definitions. - - ...

(d) 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 ...

Section 1105 of the Tax Law states, in part:

Imposition of sales tax. - - ... there is hereby imposed and there shall be paid a tax ... upon:

(f) (2) The dues paid to any social or athletic club in this state if the dues of an active annual member ... are in excess of ten dollars per year

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 ... are in excess of \$10 per year.

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

(2) Dues. (1) The term dues includes:

- (a) any dues or membership fees;
- (b) any assessment, irrespective of the purpose for which made, and
- (c) any charge for social or sports privileges or facilities.

(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.

Section 527.8 of the Sales and Use Tax Regulations states, in part:

527.8 Sale of food and drink. [Tax Law, §1105(d)] (a) Imposition. Sales tax is imposed on the receipts, including any cover, minimum, entertainment or other charge, from every sale of beer, wine or other alcoholic beverages and food or drink of any nature sold in or by restaurants, taverns or other establishments in this State or by caterers ...

(f) Caterers.

(2) Purchases by caterers.

(iv) Taxable food and drink. Purchases by caterers of prepared food or drink (taxable under subdivision (a) of this section) may not be made for resale and are subject to tax at the time of purchase. However, a caterer may take a credit on its sales tax return for the tax paid on such food. (See subdivision (i) of this section for more information on the purchase of food or drink for resale.)

Example 5: A caterer has several parties at onetime and is unable to prepare all the food for the various groups. The caterer purchases prepared meat

platters and prepared hot and cold salads to distribute to the various catered groups. Although the caterer may not purchase the prepared food exempt from tax as a purchase for resale, it may claim a credit when reporting its catered sales on its sales tax return for the tax paid on the food.

* * *

(i) Resale . (1) Any person purchasing food or drink for resale as such is required to pay tax thereon at the time of purchase.

(2) When the food or drink is subsequently resold, the seller is required to collect tax from the purchaser.

(3) The tax paid by the seller may be taken as a credit against the tax which the seller is required to collect and remit on the subsequent sale. The credit is limited to the amount of tax actually paid on the purchase by the seller of the food and drink resold.

Section 1133 of the Tax Law states, in part:

Liability for the tax - - (a) Except as otherwise provided every person required to collect any tax imposed by this article shall be personally liable for the tax imposed, collected or required to be collected under this article.

Section 1134 of the Tax Law states, in part:

Registration. - - (a)(1)(i) Every person required to collect any tax imposed by this article shall file with the commissioner of taxation and finance a certificate of registration, in a form prescribed by him

In the instant matter Petitioner is considered to be a social club as defined under Section 527.11(b)(6) of the Sales and Use Tax Regulations and is required to collect sales tax on dues payments from members as imposed under Section 1105(f)(2) of the Tax Law and Section 527.11(a)(1) of said Regulations. Since Petitioner is required to collect sales tax, Petitioner is liable for the sales tax collected as provided under Section 1133 of the Tax Law and is also required to be registered as a sales tax vendor under the provisions of Section 1134 of the Tax Law.

Accordingly, Petitioner is liable for collecting sales tax on the annual membership fee charged to club members, and on all activity fees and other charges billed to members directly by Petitioner. Petitioner must submit any sales tax collected on the sales tax return filed for the applicable period in which the tax was collected.

Petitioner may not transfer sales tax collections to the Williams Club for inclusion on a sales tax return filed by the Williams Club.

However, when the Williams Club directly bills Petitioner's members for use of the facilities or for services rendered by the Williams Club, the Williams Club will be liable for collecting and submitting any sales tax due on the charges billed directly to Petitioner's members.

When Petitioner organizes a social function which is held at the William's Club, the William's Club in accordance with Sections 527.8(a) and (f)(2)(iv) of the Regulations, is required to collect sales tax from Petitioner on all charges to Petitioner for food, beverage, etc. Since Petitioner is considered to be reselling the food, drink, etc., to its members, Petitioner must collect sales tax on the activity fee billed to its members to attend the function. However, Petitioner, in accordance with Sections 527.8(f)(iv) and (i) of the Regulations, may claim a credit on the applicable sales tax return for the amount of sales tax paid to the William's Club in connection with the purchase of the food, drink, etc.

DATED: April 20, 1993

/s/
PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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