

New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Technical Services Division

TSB-A-00(24)S
Sales Tax
May 31, 2000

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S990810A

On August 10, 1999, the Department of Taxation and Finance received a Petition for Advisory Opinion from Dapolito and Company, CPA's, 2234 Jackson Ave, Seaford, New York, 11783. Petitioner, Dapolito and Company, CPA's submitted additional information with respect to the Petition on March 23, 2000.

The issue raised by Petitioner is whether dues and membership initiation deposits charged to members as described below are subject to sales tax.

Petitioner submits the following facts as the basis for this Advisory Opinion.

Petitioner's client, a for-profit privately owned business entity doing business as a New York Limited Liability Company, will own a golf and social facility ("the Club"). Petitioner's client will have common ownership with a developer entity which developed and sold approximately 50-100 condominium units which border the Club's premises. The Club will sell golf memberships, which will afford members with the full use of the golfing facilities and include social membership privileges, and will sell social memberships only, which do not include the use of the golfing facilities.

The members will not own a proprietary interest in the Club, participate in any manner in management functions or the selection of members, or control social or athletic activities, tournaments, elections or committees.

Golfing memberships will be available to the owners of the condominium units (the unit owners) and the general public on a first-come, first-serve basis and are limited to 350 golfers, based on the physical capacity of the facility. Social memberships will be similarly offered on a first-come, first-serve basis to the unit owners and the general public. The owners of the Club will maintain sole control over the acceptance of members. Generally, only members and their guests may use Club facilities, although the Club may schedule special events for non-members.

As a condition precedent to golfing membership, new members must pay a one-time membership initiation fee deposit (initiation fee) in addition to their annual dues. The initiation fee is refundable, without interest, 30 years after the date a member resigns from the club.

The Operating Agreement of Petitioner's client states in part:

1.3 Purposes. The purpose and business of the Company shall be to (i) acquire, hold, improve, sell, finance, refinance, lease, manage, exchange, and

otherwise dispose of real estate and the improvements, fixtures and equipment thereon (collectively, the "Property"), including but not limited to the property known as the xxx Country Club, located in xxx, New York; (ii) develop, redevelop, operate, maintain or otherwise deal with the Property, including the development, operation and management of recreational facilities, including, without limitation, golf clubs and golf courses; and (iii) engage in any and all acts necessary, advisable or incidental to the carrying out of the obligations attendant to the foregoing.

1.4 Powers. The Company shall have the power to do any and all acts reasonably necessary, appropriate, proper, advisable, incidental or convenient to or for the furtherance of the purposes and business described herein and for the protection and benefit of the Company.

Applicable Law and Regulations

Section 1101(d) of the Tax Law provides, in part:

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.

(7) 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.

* * *

(13) Social or athletic club. Any club or organization of which a material purpose or activity is social or athletic.

Section 1105(f)(2)(i) 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...."

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

(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 paid to any social or athletic club, regardless of the amount of dues, if such initiation fee is in excess of \$10.

* * *

(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.

* * *

(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.

* * *

(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.

(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.

* * *

(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.

Opinion

In Cobleskill Golf and Country Club, Inc., Adv Op Comm T&F, March 30,1994, TSB-A-94(13)S, it was held that since members in the petitioner’s golf and country club held no proprietary rights, had no control over its activities or management, and membership was not restricted, the dues paid by members were not subject to sales tax. See also Lafayette Golf & Country Club, L.L.C., Adv Op Comm T&F, April 17, 1997, TSB-A-97(23)S, and Antlers Country Club, Inc., Dec Tax App Trib, November 19, 1992, TSB-D-92(79)S.

Petitioner’s client, an LLC, includes among its purposes the ownership, operation and management of the Club described in this Petition. The members of the Club possess no proprietary rights in the Club and have no control over its activities or management. In addition, membership in the Club is restricted solely because of the physical capacity of the facility. Based on the

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foregoing, the Club is not a “social or athletic club” within the meaning of Section 1105(f)(2) of the Tax Law. Therefore, dues and initiation fees paid by its members are not subject to State and local sales taxes.

DATED: May 31, 2000

/s/
John W. Bartlett
Deputy Director
Technical Services Division

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