

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

TSB-A-83(20)S
Sales Tax
April 28, 1983

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO.S820706A

On July 6, 1982 a Petition for Advisory Opinion was received from Four Seasons Fitness & Racquet Club d/b/a Village Glen Tennis & Fitness Club, 162 Mill Road, Amherst, New York.

The issue raised is whether any of the following charges made by Petitioner are subject to sales tax:

1. Hourly tennis court time
2. Unlimited summer tennis court time
3. Party room rentals
4. Health Club membership
5. Health Club and Tennis Membership
6. Tennis Membership

Petitioner, a limited partnership, owns a health and fitness club which offers physical therapy equipment, a cardiac rehabilitation center, a large track, health and fitness equipment, locker rooms, tennis courts and function rooms. Individuals may purchase health club memberships, tennis memberships or a combination of health club and tennis memberships. Whether an individual has a combination or a tennis membership, there is an additional charge for use of the tennis courts on an hourly basis. During the summer months members may purchase unlimited court time for an additional charge.

Section 1105(f)(2) of the Tax Law imposes a 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 "

Section 527.11(b)(5) of the Sales and Use Tax Regulations provides as follows:

(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:

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- (a) charges for the use of facilities on an annual or seasonal basis even if an annual or season pass is the only method of sale and provided such passes are sold on a first-come, first serve basis;
- (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;
- (c) uses the word "club" or "member" as a marketing device;
- (d) offers tournaments, leagues and social activities which are controlled solely by the management.

The organizational structure of Petitioner's business operation does not allow for membership control of social or athletic activities, tournaments, dances, elections, committees, participation in the selection of members or management of the club. Neither is there any evidence of possession by the members of a proprietary interest in the organization. Accordingly, Petitioner is not a social or athletic club within the meaning of section 1105(f)(2) of the Tax Law, and the payments made thereto, as listed above, do not constitute "dues" subject to tax. Neither are they subject to sales tax on any other basis.

DATED: April 12, 1983

s/FRANK J. PUCCIA
Director
Technical Services Bureau