

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

TSB-A-83(40)S
Sales Tax
October 11, 1983

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S830722A

On July 22, 1983 a Petition for Advisory Opinion was received from Dennis Land Development Co., Inc., c/o John Dennis, Esq., 112 State Street, Albany, New York 12207.

The issue raised is whether the McGregor Links Country Club is a social or athletic club within the meaning of section 1105(f)(2) of the Tax Law such that the fees paid for membership to such club constitute dues paid to a social or athletic club within the meaning of such provision.

Petitioner is the sole owner and operator of the McGregor Links Country Club, located in the Town of Wilton, N.Y. Membership in this club entitles the member to the use of an eighteen hole golf course, tennis courts, outdoor swimming pool, clubhouse and restaurant facilities. Members are also eligible to participate in any golf tournaments, tennis tournaments, swim meets and various other social gatherings and dances put on by the management. Members are admitted on a first-come, first-serve basis. All members enjoy identical membership privileges and use of the facilities. Members have no proprietary interest in the Dennis Land Development Co., Inc.

Petitioner as the sole owner and operator of the McGregor Links Country Club maintains sole control and authority over all tournaments, meets, dinner parties, dances, and committee appointments.

Section 1105(f)(2) of the Tax Law imposes a sales tax on the dues paid to any social or athletic club in this State. Section 527.11 of the Sales and Use Tax Regulations defines the term "club or organization" as ". . . 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:

(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-served 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;

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(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."

Accordingly, inasmuch as Petitioner has sole ownership of the "club" at issue and retains control over all activities of the club, McGregor Links Country Club is not a social or athletic club within the meaning and intent of section 1105(f)(2) of the Tax Law and, accordingly, the membership fees paid by its members do not constitute dues subject to tax.

DATED: September 16, 1983

s/FRANK J. PUCCIA
Director
Technical Services Bureau