

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

TSB-A-85(28)S
Sales Tax
July 29, 1985

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S841219A

On December 19, 1984 a Petition for Advisory Opinion was received from The Silver Gull Club, Inc., P.O. Box 277, Fort Tilden, New York 11695.

The issues raised are whether Petitioner is a social or athletic club within the meaning and intent of Section 1105(f)(2) of the Tax Law and whether dues paid by Petitioner's members are subject to New York State and local sales taxes.

Petitioner, a New York State Membership Corporation, operates a beach club on federal land, offering its members and their guests seasonal use of the beach and facilities, such as cabanas, tennis courts, and a bar, restaurant and cafeteria.

The club property is occupied under a year-to-year permit issued by the United States Department of the Interior, which specifically forbids discrimination based on sex, race, national origin, etc. Club memberships are available to the general public on a first-come, first-served basis. The membership includes some 4500 seasonal members and three permanent (honorary) members.

Club activities are governed by a Board of Directors (elected by, and comprised of the three permanent members) and the Members' Governing Committee, which is elected by the seasonal members.

Petitioner states that the corporate by-laws permit the Board of Directors to reject any or all actions taken by the Members' Governing Committee. Petitioner contends that this power conferred on the permanent members indicates an absence of membership control which exempts membership dues from the sales tax imposed by Tax Law 1105(f)(2). Furthermore, Petitioner claims such dues are not subject to tax under Tax Law 1105(f)(1), since the members participate in sporting activities and have no proprietary interest in the organization.

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 exclusively of the initiation fee, are in excess of ten dollars per year. . . ."

The term "club" is defined 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. . . 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. (Emphasis added).

The purposes for which Petitioner's organization was formed are stated in the Certificate of Incorporation as: "To . . . maintain a shore club to . . . provide recreation for its members and their guests, for the development of social life among the members of the club both for their mutual physical improvements, . . .and for the promotion of the social life of the community."

The corporate by-laws provide, in part: Seasonal members of the club . . . shall make written application . . . upon the terms . . . stated in these by-laws and upon such other terms and conditions as may be required by the Board of Directors. . . . Permanent members of the club shall consist of members of the Board of Directors and any individuals elected to permanent membership by a majority vote of the Board of Directors. . . . Any permanent member of the club may be suspended or expelled for cause by the . . . Board of Directors. The permanent members of the club shall be the only class of members entitled to vote except as hereinafter provided No seasonal or daily member shall be entitled to vote on any matter except as specifically hereinafter provided."

The by-laws further regulate the establishment of a Members' Governing Committee and permit each seasonal member to cast one vote for each elective member of such committee. The by-laws go on to describe the powers and duties of the Members' Governing Committee as follows:

"The Members' Governing Committee shall have the direction of the athletic and social affairs of the club. It shall appoint such standing committees as it may deem proper. It shall make such rules and regulations for the use of the Club House and all the facilities of the club as may to the Committee seem expedient . . . Any action of the Members' Governing Committee shall be final and binding on all members unless and until disapproved by the Board of Directors. . . . Any seasonal member of the club may be suspended or expelled for cause by the Members' Governing Committee by the affirmative vote of such fractional portion of such Committee as the Committee may establish in its governing rules."

In reasoning that the seasonal members have no control over club activities Petitioner relies on an example given in Regulations Section 527.11(f)(ii):

Example 19: Members of a "club" maintain an advisory committee to make suggestions to the "club" owner. The owner is not obligated to accept any of the suggestions. The members do not control any aspects of the "club's" activities; therefore, this is not a club or organization.

Since this example presumes club management by an individual owner, it is not here applicable.

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It is noted that, even if the extent to which seasonal members control club activities may be limited by the powers granted in the by-laws to the directors of the organization, Petitioner states in the petition with regard to the Board of Directors that: "The permanent members . . . three persons who are directors of the corporation . . . have complete control over the affairs of the corporation."

It follows from the foregoing that the membership does control the management of the club. Therefore Petitioner is a "club or organization: within the meaning of the Regulations provisions quoted above and, thus, is a "social or athletic club" in accordance with Section 1105(f)(2) of the Tax Law. In consequence, the membership fees charged by Petitioner constitute "dues paid to any social or athletic club" which are subject to New York State and local sales taxes.

DATED: July 1, 1985

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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