

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

TSB-A-88(13)S
Sales Tax
January 26, 1988

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S870923A

On September 23, 1987, a Petition for Advisory Opinion was received from Harold Rothberg, 295 Madison Avenue, New York, New York.

The issue raised is whether dues paid to the Canyon Club are subject to the sales tax imposed by section 1105(f)(2) of the Tax Law and, if not, is Petitioner entitled to a refund of sales tax paid on such dues.

The Canyon Club is a golf and tennis club. The club maintains different types of memberships. In addition to membership dues, the club obtains some of its revenue from catering to non-members and by allowing non-members to use the club grounds and facilities for various outings.

Petitioner believes that the Canyon Club's dues are not subject to sales tax for the following reasons:

1. Without notifying the members or securing their consent, the club held approximately 18 private outings during June 1984.
2. In July 1984, the club held 10 outings without knowledge or permission of the members.
3. In addition, the club cancelled dinners on both Saturdays and Sundays in 1981, 1982 and 1983 without any notice and without consent of the membership.
4. Again in August, 1984, the club held 11 private parties without member's knowledge and consent.
5. In 1984, the club, formerly non-profit, obtained a catering license and became a profit organization.

In addition, Petitioner states that the club is owned by Mitsubishi International Corporation and that the management role of its members follows that of Example 19 of section 527.11 of the sales tax regulations.

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".

The following excerpts from the sales tax regulations pertain to club dues:

RODERICK G. W. CHU, COMMISSIONER

GABRIEL B. DiCERBO, DEPUTY COMMISSIONER

FRANK J. PUCCIA, DIRECTOR

527.11 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, 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.

(3) Where the tax applies to any social and athletic club, the tax shall be paid by all members thereof, regardless of the amount of their dues or initiation fee.

Example 1: A social club maintains two types of memberships. Full memberships are \$15 per year and limited memberships are \$5 per year. Since the dues paid by the full members are in excess of \$10 per year, all members' dues are taxable even though some are not more than \$10.

* * *

(b)(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.

The By-Laws of the Canyon Club contain the following provisions regarding membership and the board of directors:

ARTICLE II

Section 1

* * *

Members shall possess voting power for the election of members of the Board of Governors and for all other Club purposes, except that the Board of Governors shall have authority to establish a special class of members which, in consideration of the payment of

an annual fee, but without the payment of an initiation fee, shall have limited privileges to use the facilities of the Club, but shall not have voting rights.

ARTICLE III
BOARD OF GOVERNORS

Section 1. Number, Qualifications, Election
and Term of Office.

The control and management of the Club and its property shall be vested in a Board of Governors consisting of nine (9) members, each of whom shall be a member entitled to vote. At the annual meeting held in January, 1975, nine (9) Governors, and an Alternate Governor for each of said Governors, shall be elected, three (3) for a term of one (1) year, three (3) for a term of two (2) years and three (3) for a term of three (3) years. At each successive annual meeting, three (3) Governors (and an Alternate Governor for each Governor) shall be elected to hold office for three (3) years as successors to the Governors whose terms of office shall expire at such annual meeting. All Governors and Alternate Governors shall hold office until their successors have been elected and qualified. Any vacancy in the Board of Governors shall be filled by the Alternate Governor to whom such vacancy relates, for the unexpired portion of the term of such vacancy. "Vacancy," as used in these By-Laws, shall mean a permanently unoccupied post has been created by the occurrence of any event terminating the lawful right to hold such post. Should vacancies occur in the post of any Alternate Governor, the remaining members of the Board of Governors may fill the vacancy for the unexpired portion of the terms of such vacancy. (Emphasis supplied)

As indicated in §527.11(b)(5), the dues of a club may be subject to sales tax if the club is either for-profit or not-for-profit.

The controlling factor in determining whether a club, in fact, exists is whether or not the members have any control over the management of the organization. As stated in the Canyon Club by-laws, the board of governors control and manage the club; the board is elected by the membership and, in fact, in order to serve on the board, a person must be a member of the club.

Accordingly, since the members elect the Board of Governors the members have control of the organization. Therefore, the Canyon Club is a "club or organization" for sales tax purposes. The fact that another class of members do not vote for the Board of Governors does not change this result.

Additionally, regulation section 527.11(b)(6) and (7) provide:

(6) Social club. A social 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 or promotion of any sports or athletics.

Accordingly, based upon its activities, the Canyon Club is clearly a social or athletic club.

Since the Canyon Club is a social or athletic club with dues over \$10 per year, Petitioner correctly paid the sales tax imposed on dues and thus is not entitled to a refund.

DATED: January 26, 1988

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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