

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

TSB-A-88 (41)S
Sales Tax
August 24, 1988

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S880601C

On June 1, 1988, a Petition for Advisory Opinion was received from Asher Kahn D/B/A Fenway Tennis Shop, 425 Henry Hudson Parkway, Riverdale, New York 10471.

The issue raised is whether tennis lessons given by Petitioner are subject to sales tax pursuant to section 1105(f)(2) of the Tax Law.

Petitioner operates the tennis facility at a private golf club in Westchester County which facility includes tennis courts and a tennis shop. Petitioner states that he operates exclusively as an independent contractor.

Petitioner states that if a club member wishes to take a lesson, the member telephones the club and sets a time with the professional or his shop keeper. The member then takes the lesson, and the fee for the lesson appears on the member's monthly statement from the club. No cash is exchanged. The lesson fees are collected by the accounting department of the golf club through the member's monthly statements and monthly payments are then made by the club to Petitioner. Payments to the professional are made by a check and no withholding amounts from such checks for income and social security taxes are made since the professional is an independent contractor.

Moreover, with respect to the sports instruction fees, Petitioner maintains that the club merely acts as a conduit between Petitioner and the members, similar to caddies at the club in the golfing area.

Pursuant to section 1105(f)(2) of the Tax Law, sales 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 ten dollars per year...

Section 1101(d)(6) of the Tax Law defines "dues" as:

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 guest.

Furthermore, section 527.11(b)(2)(i) of the Sales and Use Tax Regulations states, "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".

TSB-A-88 (41)S
Sales Tax
August 24, 1988

In a Declaratory Ruling of the State Tax Commission 80-02, TSB-H-80(23)S, it was held that:

...where a club charges a member's account for caddie fees owed by that member to a particular caddie, such fees are not 'dues' as defined in section 1101(d)(6) of the Tax Law if (i) such fee is owed personally by the member to the caddie on account of some service the caddie actually performed for the member; (ii) such fee is disbursed directly, in total, to the caddie who actually performed the service, the club acting solely as a conduit between the member and the caddie; and (iii) the charge is separately stated to be a caddie fee.

Similarly, in the present case the tennis lesson fees charged by Petitioner will not be deemed "dues" within the meaning of section 1101(d)(6) of the Tax Law and section 527.11(b)(2)(i) of the Sales and Use Tax Regulation if: (1) the fees for the tennis lessons are owed personally by the members to Petitioner; (2) instead of the members paying Petitioner in cash at the time of the lesson, the lesson fees are collected by the accounting department of the golf club through the members' monthly statements and monthly payments are then made by the club to Petitioner; (3) the club acts solely as a conduit between the members and Petitioner; and (4) the charge on the members' monthly statements clearly states that the charge is for tennis lessons. Accordingly, the fees charged by Petitioner will be not subject to sales tax pursuant to section 1105(f)(2) of the Tax Law if all four above conditions are met. However, if the tennis lesson fees are used to reduce any minimum monthly charge due by a member to the club, condition number three above will not be met and the tennis lesson fees will be considered taxable dues paid to a social or athletic club.

DATED: August 24, 1988

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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