

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

TSB-A-94 (10)S
Sales Tax
March 17, 1994

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S930920A

On September 20, 1993 a Petition for Advisory Opinion was received from John L. Buono, as Rensselaer County Executive, Ned Pattison Government Center, 1600 Seventh Avenue, Troy, NY 12180.

The issues raised by Petitioner, John L. Buono, as Rensselaer County Executive, are:

1. Whether the receipt from the purchase of a "discount club" membership is subject to New York State and local sales tax.
2. If yes, whether the receipt is subject to the sales tax rate applicable to the county within which the membership is purchased or to the county within which the "discount club" is located.
3. Whether the sales tax collected should be remitted to the county within which the purchase of the membership was made or to the county in which the "discount club" is located.

A constituent of Petitioner recently purchased a "Sam's Club" discount club membership at the Wal-Mart Discount Cities Store located at 279 Troy Road, East Greenbush, Rensselaer County, New York. The constituent was charged sales tax on the purchase of the membership. When he was told at the store that sales tax was applicable to the purchase, he inquired as to why he was charged 8% sales tax and not the 7% rate that prevails in Rensselaer County. The store officials advised that they must charge the 8% rate which prevails in Albany County since a Sam's Club warehouse was about to open in Albany County. The constituent then inquired of store officials as to which county would receive the sales tax revenue, and was informed that the revenue from the sale of the discount club memberships was to be remitted to Albany County. The membership is valid at all Sam's Club warehouses, regardless of their locations.

Section 1105(a) of the Tax Law imposes sales tax on the receipts from every retail sale of tangible personal property, except as otherwise provided.

In Costco Wholesale Corporation, Adv Op St Tx Comm, September 17, 1992, TSB-A-92(66)S the Commissioner of Taxation and Finance advised that the annual membership fee paid by members for access to Costco's warehouse sales facilities was subject to sales tax pursuant to Section 1105(a) of the Tax Law since, in substance the membership fee was a prepayment for the merchandise sold by Costco.

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In the Matter of Credit Bureau of Central New York v. State Tax Commission, 105 AD2d 1042 (1984), the court determined that membership fees paid to a credit reporting agency were merely part of the members' cost of the credit reports since the credit reports were the only things provided to members by the credit bureau in return for the fee. The court concluded that such fees are subject to tax since they are, in reality, prepayments which only entitled members to reduced charges for the credit reports.

In Norman Eiger, Adv Op St Tx Comm, December 3, 1985, TSB-A-81(20.1)S the State Tax Commission advised that membership fees charged by petitioner which entitled members only to a reduced rental charge on movies and no other rights or benefits, was subject to sales tax since the membership fee represented a prepayment for the rental of the movies.

Technical Services Bureau Memorandum TSB-M-86(8)S, July 7, 1986 states as follows:

This memorandum reflects the policy of the Tax Department on the taxability of video club membership fees.

Video club "memberships" generally enable purchasers to rent movies at rates lower than the rates charged to persons who do not purchase memberships.

Even though vendors of memberships in video clubs characterize the charges as "membership fees", the substance of the charge is that of a prepayment for the rental of a movie. Therefore, the fee for joining is determined to be taxable (section 1105(a) of the Tax Law).

In accordance with Costco Wholesale Corporation, supra, Credit Bureau of Central New York v. State Tax Commission, supra, Norman Eiger, supra, and TSB-M-86(8)S the receipts from the charge for a Sam's Club discount club membership is subject to the sales tax imposed under Section 1105(a) of the Tax Law since, in substance, the membership fee is a prepayment for the merchandise sold by Sam's Club.

Since the nearest Sam's Club is not located within Rensselaer County but is located in Latham, which is within Albany County, the membership will allow the member to make discount purchases at the Sam's Club located within Albany County. Accordingly, the proper rate of sales tax to be applied to receipts from charges for memberships in Sam's Club is 8%, the current combined State and local sales tax rate in effect in Albany County.

Moreover, since the membership is intended for the purpose of allowing the member to make discount purchases within Albany County, the sales tax collected on the receipts from the sales of memberships, even though made in Rensselaer County, must be credited to Albany County on the Albany County line of the sales tax return filed for the Wal-Mart store located in Rensselaer County.

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It is noted that if the membership application for a discount club membership in a club that has multiple locations in various counties specifically states the specific store which is issuing the membership then the sales tax to be collected should be at the rate in the county in which the store is located and the tax should be credited to said county. However in the event that no specific store is indicated, then the sales tax to be collected should be at the rate in the nearest county to the point of sale in which a discount club store is located and the tax credited to said county.

DATED: March 17, 1994

/s/
PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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