

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

TSB-A-94 (38)S  
Sales Tax  
September 7, 1994

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S940601A

On June 1, 1994 a Petition for Advisory Opinion was received from The Anchorage Yacht Club Condominium, 401 East Shore Road, Lindenhurst, New York 11757.

The issues raised by Petitioner, The Anchorage Yacht Club Condominium, are:

1. Whether the Petitioner is a social or athletic club. If yes, whether the sale of a slip unit is considered to be a sale of real property or are the receipts from such sale considered to be taxable dues.
2. Whether maintenance services may be purchased tax exempt as purchases for resale in instances where Petitioner collects sales tax on maintenance fees billed to members.

Petitioner is a yacht club condominium operating a yacht club at 401 East Shore Road, Lindenhurst, New York.

The Introduction of Petitioner's Condominium Offering Plan states, in part:

Purpose of the Plan

Anchorage Associates (the "Sponsor") presents this Offering Plan (the "Plan") for the condominium ownership of the premises known as 401 East Shore Road, Lindenhurst, New York (the "property") under the provisions of the Condominium Act.

The purpose of this Plan is to set forth all of the material terms of the offer to establish the Property as a condominium and to sell 460 Slip Units therein.

\* \* \*

Interest in the Property to be Submitted to Condominium Act

A condominium will be created and established by submitting fee title to the Property to the provisions of the Condominium Act ... in accordance with the Declaration and By-Laws set forth in Part II of the Plan. The Condominium will be known as The Anchorage Yacht Club Condominium and will be subject to the Condominium Act and all laws regulating condominiums.

\* \* \*

Offer of Sale of Condominium Units

The Sponsor hereby offers for sale 460 Slip Units on the terms and conditions set forth in the plan.

\* \* \*

Features of Condominium Ownership

The ownership of a Slip Unit is similar in many respects to the ownership of a parcel of ocean front property. Each Slip Unit Owner owns fee title to his Slip Unit and is entitled to the exclusive possession thereof.

\* \* \*

Each Slip Unit Owner also owns in common with other Unit Owners an undivided interest in the Common Elements known as his Common Interest. The Common Elements, as described in "Description of the Property" ... and in the Declaration ... include portions of the Land, the central and appurtenant installations for services such as power, the outdoor pool, two outdoor tennis courts, the snack bar kiosk, and the common bathroom facilities ....

\* \* \*

The Sponsor will make application to divide the Property into separate tax lots for each Unit and its Common Interest, which will then be taxed as a separate tax lot for real estate tax purposes. Once a separate tax lot is established for a Unit a Unit Owner will then be responsible for the payment of the real estate taxes on his, but not any other, Unit and his Unit will not be affected by virtue of nonpayment of real estate taxes by any other Unit Owner. The amount of the tax assessed against any Unit will depend upon various factors affecting value, including but not limited to square footage location, purchase price and other factors taken into consideration by the taxing authorities.

Definitions

"Board" means the Board of Managers of the Condominium.

\* \* \*

"Common Charges" means any charges assessed by the Board of Managers against any Unit Owner.

"Common Expenses" means all costs and expenses incurred or paid generally by the Board in connection with the operation of the Condominium which, pursuant to the Plan, the Declaration and By-Laws, are to be paid by the Unit Owners in proportion to their Common Interests....

The By-Laws of Petitioner state, in part:

Article II  
Board of Managers

Section 1. Number and Term of Office. As more particularly set forth in these By-Laws and the Declaration, the affairs of the Condominium shall be governed by a board of managers of the Condominium (the "Board of Managers"). The Board of Managers shall be composed of five (5) members. Until the first meeting of the Unit Owner, the members of the Board of Managers shall consist of five (5) persons appointed by the Declarant. Each member of the Board of Managers shall serve for a term of one (1) year or until their respective successors shall have been duly elected....

\* \* \*

Article III  
Unit Owners

Section 1. Annual Meetings. Within forty-five (45) days after the date the Declarant conveys title to the first Unit pursuant to the Condominium Offering Plan proposed by the Declaration for the Property (the "Plan"), the first meeting of Unit Owners shall be held. At such meeting the incumbent Board of Managers shall resign and a new Board shall be elected by the Unit Owners as provided in the By-Laws. Thereafter, annual meetings shall be held.... At such meetings the Unit Owners shall elect members of the Board of Managers to fill vacancies or to succeed retiring members of the Board of Managers as provided in Article II of these By-Laws and shall also transact such other business of the Condominium as may properly come before the meeting.

Section 1105 of the Tax Law states, in part:

Imposition of sales tax.--... there is hereby imposed and their shall be paid a tax ... upon:

(c) The receipts from every sale, except of resale, of the following services:

(3) Installing tangible personal property, ... or maintaining, servicing or repairing tangible personal property, ... not held for sale in the regular course of business, whether or not the services are performed directly or by means of coin-operated equipment or by any other means, and whether or not any tangible personal property is transferred in conjunction therewith ....

(f)(2) 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, and on the initiation fee alone, regardless of the amount of dues, if such initiation fee is in excess of ten dollars, except that the tax shall not apply to a

fraternal society, order or association operating under the lodge system or any fraternal association of students of a college or university. Where the tax on dues applies to any such social or athletic club, the tax shall be paid by all members, other than honorary members, thereof regardless of the amount of their dues, and shall be paid on all dues or initiation fees for a period commencing on or after August first, nineteen hundred sixty-five. In the case of a life membership, the tax shall be upon the amount paid as life membership dues, however, a life member, other than an honorary member, paying an annual sales tax, based on the dues of an active annual member, shall continue such payments until the total amount of such tax paid is equal to the amount of tax that would have otherwise been due had the tax been imposed at the time such paid life membership has been purchased and at the then applicable rate.

Section 527.11 of the New York State Sales and Use Tax Regulations states, in part:

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, in such initiation fee is in excess of \$10.

(b) Definitions. As used in this section, the following terms shall mean:

(2) Dues. (i) 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.

Example 3: A social club collects no regular dues or membership fees, but meets its operating expenses by levying assessments on its members as funds are required. These assessments constitute taxable dues or membership fees where the fees, combined with annual dues, exceed \$10.

(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.

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

Example 31: Each purchaser of a lot or condominium within a real estate subdivision automatically becomes a member of an association which operates a pool, tennis courts and nature trails within the subdivision. The association assesses each owner an annual charge to provide funds for the operation of these facilities. The association has the right to limit the number of guests of members and to charge reasonable fees for the use of the facilities. The association is an athletic club, as it has a material purpose of providing sports privileges and facilities. The fact that membership is automatic upon purchase of real property has no effect on the association's status as a club.

In the instant matter, the activities and status of the Unit Owners as described in the Offering Plan and in the Bylaws are such that Petitioner is considered to be a club as defined under Section 527.11(b)(5) of the Sales and Use Tax Regulations.

Since Petitioner bills each Unit Owner a share of the Common Expenses incurred in connection with the Common Elements which include portions of the land, the outdoor pool, two outdoor tennis courts, the snack bar kiosk, etc. and since the Unit Owners meet at least annually, Petitioner is considered to be a social or athletic club as defined under Section 527.11(b)(6) and (7) of the Regulations. (Also see Section 527.11(b)(7), Example 31 of the Regulations.) Accordingly, any assessment made by Petitioner to the Unit Owners will be construed as dues, including expenses incurred in connection with the Common Elements. (See Section 527.11(b)(2) of the Regulations.) However, the sale of a slip unit, which the Slip Unit Owner owns fee title to and which is assessed for real property tax purposes, is considered to be a sale of real property and the receipts from such sale will not be subject to sales or compensating use tax. (See Breezy Point Surf Club, Inc. v State Tax Commission, 67 AD2d 760, affd 48 NY2d 776.)

Any expenses billed to a Unit Owner which were incurred by Petitioner because of maintenance or repairs to a slip unit will be considered as expenses from services for maintaining or repairing real property. The receipts from such services will not be considered as dues but instead as receipts from maintaining, servicing or repairing real property and will be subject to the tax

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imposed under Section 1105(c)(3) of the Tax Law. Petitioner may purchase such services tax exempt as services for resale by giving the supplier of such services a properly completed form ST-120, Resale Certificate.

However, when Petitioner bills a unit owner for the Unit Owner's share of Common Expenses, such charges are considered to be dues and the receipts from such charges will be subject to the tax imposed under Section 1105(f)(2) of the Tax Law. When Petitioner incurs such expenses, the charges to Petitioner will be considered to be charges for maintaining, servicing or repairing real property and will be subject to the tax imposed under Section 1105(c)(3) of the Tax Law. Since Petitioner will not be reselling such services to Unit Owners, Petitioner may not purchase such services tax exempt as purchases for resale.

DATED: September 7, 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.