

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

TSB-A-94 (47)S  
Sales Tax  
October 18, 1994

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S940624A

On June 24, 1994 a petition for Advisory Opinion was received from The Hamlet Golf and Country Club, Inc., Fred Fallik, Controller, The Holiday Organization, Inc., 400 Post Avenue Westbury, NY 11590.

The issue raised by Petitioner, The Hamlet Golf and Country Club, Inc., is whether the dues and fees charged to members by Corporation B are subject to the sales tax imposed under Section 1105(f)(2) of the Tax Law.

Two regular New York State business corporations with common private ownership were formed for the following business purposes:

1. Corporation A constructs and sells homes in a residential community with a golf course.
2. Corporation B is a separate entity operating the country club facility under an agreement with Corporation A. Corporation B will operate the club as a for-profit commercial activity.

Purchasers of homes within Corporation A's residential community are required to become social members in the club operated by Corporation B and for an additional fee may obtain a golf membership.

There will be 325 golf memberships sold in Corporation B with 170 reserved for home owners within Corporation A's residential community who can select annually to be golf members. All unsold reserved golf memberships as well as other types of memberships will be sold to the general public.

The membership, will not control, in any way, the admission of new members. The membership will not be involved in the management of the club nor the election of corporate officers and will not own a proprietary interest in the club.

The memberships in the club which will be offered to the general public by Corporation B will be on a first-come, first-served basis without restriction on geographic area, income, race, religion, or any other means. Any restrictions on the size of the membership will be based solely on the physical size of the facility.

Section 1105(f)(2) of the Tax Law imposes sales tax upon "The dues paid to any social or athletic club in this state ...."

Section 527.11 of the 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 ...

(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.

(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 organization structure may be formal or informal.

(ii) A club or organization does not exist merely because a business entity:

(b) restricts the size of the membership solely because of the physical size of the facility. Any other type of restriction may be viewed as an attempt at exclusivity;

\* \* \*

Example 18: A club owned by an individual which attempts to restrict its membership by geographic area, income, race, religion or any other means, is a club or organization. However, a "club" owned by an individual which restricts its membership only because of the physical capacity of its facilities is not a club or organization.

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(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.

In the instant matter, home owners within Corporation A's residential community are required to become social members in Corporation B's club which constitutes a social or athletic club as defined in Section 527.11(b)(6) and (7) of the Sales and Use Tax Regulations. Despite Petitioner's offering of numerous additional memberships to the general public on a first-come, first-served basis without restriction on geographic area, income, race, religion or any other means, the requirement that all purchasers of residences within Corporation A's residential community become social members in Corporation B's club is viewed as a restriction on membership and an attempt at exclusivity. See Epstein v. United States, 353 F2d 928; Fox Wander West Neighborhood Association, Inc., Adv Op St Tx Comm, July 29, 1980, TSB-H-80(156)S.

Since Corporation B attempts to restrict its membership in the club, it is considered to be a "club or organization" in accordance with the meaning and intent of Section 527.11(b)(5) and Section 527.11(b)(5) Example 18 of the Sales and Use Tax Regulations. This is true even though no members of the club control social or athletic activities, tournaments, dances, elections, committees, participation in the selection of members and management of the club or organization, or possess a proprietary interest in the organization. See Cobblestone Creek Country Club, Inc., Adv Op St Comm T & F, November 2, 1992, TSB-A-92(74)S.

Accordingly, Corporation B's charges to its members, whether in the form of fees or dues, fall within the definition of dues as defined under Section 527.11(b)(2)(i) of the Sales and Use Tax Regulations and are subject to the sales tax imposed under Section 1105(f)(2) of the Tax Law and Section 527.11(a)(1) of the Sales and Use Tax Regulations.

DATED: October 18, 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.