

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

TSB-A-94 (55)S  
Sales Tax  
December 27, 1994

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S940615A

On June 15, 1994, a Petition for Advisory Opinion was received from Lake Lucille Property Owners Association, c/o Terri Thal, 8 Lake Drive, Lake Lucille, New City, New York 10956.

The issue raised by Petitioner, Lake Lucille Property Owners Association, is whether the annual dues paid for membership in Petitioner are subject to sales tax.

Petitioner is a non-profit association of homeowners whose purpose is to preserve, protect, maintain and improve their properties. One hundred percent of Petitioner's gross income consists of dues paid by the homeowners. Ninety percent or more of Petitioner's expenditures are for acquisition, construction, management, maintenance and care of Petitioner's property, i.e., snow removal, road paving, landscaping, real estate taxes, etc. of the common area. Petitioner has no pool, clubhouse, tennis courts or other types of social or recreational facilities. Petitioner does not maintain or operate any swimming or docking facilities nor is it responsible for supervising or patrolling Lake Lucille or controlling water pollution.

Section 1105(f)(2) of the Tax Law imposes sales tax upon the following:

(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...

Section 527.11(b)(5) of the Sales and Use Tax Regulations provides, in part, as follows:

(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.

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

(a) charges for the use of facilities on an annual or seasonal basis even if an annual or season pass is the only method of sale and provided such passes are sold on a first-come, first-served basis.

(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.

(c) uses the word "club" or "member" as a marketing device.

(d) offers tournaments, leagues and social activities which are controlled solely by the management.

\* \* \*

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". (emphasis added)

Section 527.11(b)(6) of the Sales and Use Tax Regulations provides, in part, as follows:

(6) Social Club. A social club is any club or organization which has a material purpose or activity of maintaining quarters for arranging periodic dances, dinners, meetings, or other functions affording its members an opportunity of congregating for social interrelation.

Section 527.11(b)(7) of the Sales and Use Tax Regulations provides, in part, as follows:

(7) Athletic club. (i) An athletic club is any club or organization which has a material purpose or activity the practice, participation in or promotion of any sports or athletics.

\* \* \*

Example 30: An association owns land on which it provides tennis courts and bathing beaches, with equipment and attendants and parking lots for members and their guests, gives parties for members and guests, provides water to the land of its members and maintains private roads. Only the owners of property in the vicinity of the association's land may be members of the association. The association

is an athletic club as the use of its facilities is restricted to members and a material purpose of it is providing sports privileges and facilities.

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 or 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. (emphasis added)

In the Matter of Merrick Estates Civic Association, Inc. v. State Tax Commission, 65 AD2d 669, the Court held that where residents of a particular residential section formed a corporation in order to construct a community swimming pool and related facilities, where membership was limited to homeowners living in defined residential sections, that the use of the facilities was deemed "social" and, thus, sales could be imposed upon dues paid to a social club. (emphasis added)

In the instant case Petitioner has not constructed nor does it maintain a swimming pool or related facilities, tennis courts, or a beach. In addition, Petitioner does not maintain quarters for the material purpose of arranging dances, dinners, meetings or other functions. Moreover, all dues collected by Petitioner are expended for non-sport and non-recreational activities. Accordingly, Petitioner is not a social or athletic club as described in Sections 527.11(b)(5), (6) and (7) of the Sales and Use Tax Regulations. Therefore, no portion of the annual dues paid by its membership to Petitioner are subject to the sales tax imposed by Section 1105(f)(2) of the Tax Law.

DATED: December 27, 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.