

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

TSB-A-96 (58)S
Sales Tax
September 23, 1996

STATE OF NEW YORK

COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO.S960626A

On June 26, 1996, a Petition for Advisory Opinion was received from LLM CC Inc., PO Box 2, Rock Hill, New York 12775.

The issue raised by Petitioner, LLM CC Inc., is whether the annual charge to homeowners at Lake Louise Marie for use of a swimming pool, bathrooms and lake rights falls within the exclusion from sales tax under section 1105(f)(2)(ii)(C) of the Tax Law, which became effective December 1, 1995.

Petitioner submits the following facts as the basis for this Advisory Opinion. In September 1984 Petitioner was formed and purchased property consisting of a swimming pool, bathrooms and lake rights. This purchase was made subject to covenants and restrictions which existed prior to the purchase. In order to raise funds for the purchase, stock in Petitioner was sold to the homeowners at Lake Louise Marie. Petitioner's Certificate of Incorporation provides that its stock may only be sold to owners of residential units within Lake Louise Marie, Hamlet of Rock Hill, Town of Thompson, Sullivan County.

The Declaration of Covenants and Restrictions dated July 29, 1960, submitted by Petitioner, sets forth the covenants and restrictions noted above, in part as follows:

10. Each lot or part thereof of the said . . . lots owned by the Declarant shall after conveyance be subject to a charge at the rate of One Hundred and twenty-five Dollars (\$125.00) annually from the date of delivery of title and each and every May 1st thereafter. Lot owner shall pay such charge to Declarant for the privilege of the use of the Lake, beach and swimming pool as set forth hereinafter and for such other designated recreational facilities which are now or hereafter may be made available whether or not the same are used . Lot owner further agrees that the use of said lake privileges, swimming pool, beaches are (sic) recreational facilities, is subject to the said annual charge. The charge for such privileges and other recreational facilities shall constitute a debt which may be collected by suit in any Court of competent jurisdiction, and upon the conveyance of any of the land described herein the successive owner or owners shall, from time of acquiring title, be deemed to have covenanted and agreed to pay the Declarant all charges, past or future, as provided for in this paragraph. This charge shall become a lien on the land on May 1st of each year and shall continue to be such lien until fully paid. . . Denial of the use of such facilities by Declarant. . .shall remain in full force and effect until a final determination and decision is made by Lake Louise Marie Country Club Association, a membership corporation ...

Each lot owner, upon purchase or transfer of property, is given a copy of the covenants and must abide by them in full.

Petitioner's Certificate of Incorporation provides that Petitioner's corporate purposes include the following:

To exercise, promote and protect the community of Lake Louise Marie and ... generally to protect the environment of Lake Louise Marie and the recreational facilities available to the residents of Lake Louise Marie

Section 1105(f)(2) of the Tax Law imposes a tax on:

(i) 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..... (emphasis supplied)

(ii) Dues and initiation fees paid to the following shall not be subject to the tax imposed by this paragraph:

(A) A fraternal society, order or association operating under the lodge system;

(B) Any fraternal association of students of a college or university;

(C) A homeowners association. For purposes of this subparagraph, a homeowners association is an association (including a cooperative housing or apartment corporation) (I) the membership of which is comprised exclusively of owners or residents of residential dwelling units, including owners of units in a condominium, and including shareholders in a cooperative housing or apartment corporation. where such units are located in a defined geographical area such as a housing development or subdivision and (II) which operates social or athletic facilities located in such area for use (whether or not exclusive) by such owners or residents. (emphasis supplied)

Section 527.11 of the Sales and Use Tax Regulations provides:

(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 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 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.

In this case, Petitioner's membership was organized to exercise, promote and protect Lake Louise Marie, the environment of Lake Louise Marie, the community of Lake Louise Marie and the recreational facilities available to its residents. Petitioner's annual charges to its members are dues for purposes of Section 1101(d)(6) of the Tax Law. See Lake Louise Marie Country Club, Inc., Adv Op Comm T&F, September 27, 1990, TSB-A-90(46)S.

Petitioners' membership consists exclusively of owners or residents of residential units within a defined geographical area (Lake Louise Marie, Hamlet of Rock Hill, Town of Thompson, Sullivan County). The social or athletic facilities are in the geographical area of the residential units, namely Lake Louise Marie, and these facilities are used by Petitioner's membership. Accordingly, the dues charged to Petitioner's membership fall within the exclusion from sales tax under Section 1105(f)(2)(ii)(C) of the Tax Law, which became effective December 1, 1995.

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However, payments made by homeowners associations for purchases of maintenance and repairs (including maintenance and repairs to social and athletic facilities) continue to be subject to sales tax. (See: TSB-M 95(12)S, Dues Paid to Homeowners Associations and Certain Other Organizations).

DATED: September 23, 1996

/s/
JOHN W. BARTLETT
Deputy Director
Technical Services Bureau

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