

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

TSB-A-96 (74) S
Sales Tax
December 6, 1996

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S960404B

On April 4, 1996, the Department of Taxation and Finance received a Petition for Advisory Opinion from Grasshoppers Flying Club, Inc., 108 Vassar Road, Poughkeepsie, New York 12603. Petitioner, Grasshoppers Flying Club, Inc., submitted additional information pertaining to the Petition on August 20, 1996.

The issue raised by Petitioner is whether it is a social or athletic club within the meaning of Section 1101(d)(13) of the Tax Law.

Petitioner submitted the following facts as the basis for this Advisory Opinion, together with copies of its bylaws and its Certificate of Incorporation. (The words "club" and "member" as used throughout this Opinion are not dispositive of Petitioner's status for sales tax purposes as a social or athletic club.)

Petitioner was formed in 1971 for the purpose of making light aircraft ownership and use affordable. Currently, Petitioner owns three Cessna aircraft (Models 152, 172 and 182) and has 32 members. The aircraft are for the personal use of members. Petitioner places no restrictions on the use of the aircraft. The aircraft are considered a means of transportation and may be used for business trips, pleasure or any other lawful purpose.

Each member, upon joining Petitioner's club, makes a capital contribution in the amount of the approximate current per capita net worth of the club. Each month, the member is responsible for his or her share of the club's fixed expenses (on a per capita basis) and for his or her share of the hourly aircraft expenses (on an hourly usage basis). The fixed expenses include insurance, annual inspections, painting, tiedowns, loan payments, etc. The hourly aircraft expenses include gas, oil, maintenance, reserves for engine overhauls and generally those expenses that vary with hourly usage.

The business of the club is conducted at monthly officer/director meetings and at monthly member meetings. During these meetings, the members discuss maintenance issues, aircraft costs, flight restrictions and other issues affecting the use and operation of the aircraft. Periodically, a certified instructor presents a safety-related topic for the purpose of improving members' safe operation of the aircraft.

The following is an excerpt from the club's bylaws, dated May 1995:

ARTICLE I PURPOSE

The purpose of this Club shall be to provide for its members an environment with aviation as a common interest and a convenient means of aircraft ownership which would not be economically possible on an individual basis.

The club's Certificate of Incorporation provides in part:

* * *

3. The purposes for which the corporation is to be formed are the promotion of private flying and its members, the owning of aircraft and equipment necessary for its operation, for the exclusive use of its members. To buy, sell and/or exchange aircraft and equipment and any and all replacements thereof

4. The corporation is a Type A corporation.

For federal purposes, the club is an exempt organization pursuant to Section 501(c)(7) of the Internal Revenue Code.

Applicable Law and Regulations

Section 1101(d)(13) of the Tax Law defines "social or athletic club" as follows:

Any club or organization of which a material purpose or activity is social or athletic.

Section 1105(f)(2)(i) of the Tax Law imposes sales tax, in part, 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 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) of the Sales and Use Tax Regulations provides, in part:

* * *

(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.

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(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.

Opinion

In Matter of Grasshopper Flying Club, Inc. (State Tax Commn., February 26, 1982, TSB-H-82(32)S), the State Tax Commission concluded that Petitioner "failed to introduce any evidence or provide testimony to show that it was not a social or athletic club within the meaning and intent of section [1101(d)(13)] of the Tax Law; therefore, the charges to its club members constitute dues which are subject to tax under section 1105(f)(2) of the Tax Law."

The facts presented in this matter indicate that Petitioner, as it now operates under these facts and the May, 1995 bylaws, is not a social or athletic club within the meaning and intent of Section 1101(d)(13) of the Tax Law. A club, organization or other entity having as its material purpose the affordable ownership and use of light aircraft is neither social nor athletic in nature. As indicated by Petitioner and reflected in Petitioner's bylaws and Certificate of Incorporation, Petitioner's purpose is to promote the ownership of aircraft by its members which would not be economically possible on an individual basis. Accordingly, Petitioner's charges to its club members are not subject to sales tax under Section 1105(f)(2) of the Tax Law.

DATED: December 6, 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.